

UCSD PRICE SCHEDULE AGREEMENT #4214/SD/000
PROFESSIONAL HOSPITAL SUPPLY, INC. – MEDICAL AND PATIENT CARE SUPPLIES DISTRIBUTOR

THIS UCSD PRICE SCHEDULE AGREEMENT (“Agreement”) is made and entered into on July 1, 2011, by and between The Regents of the University of California (UC) on behalf of the San Diego Campus (UCSD), and Professional Hospital Supply, Inc. (Seller) with its principal place of business at 42500 Winchester Road, Temecula, CA, 92590-2570.

1. DEFINITIONS

As used in this Agreement and its attachments and exhibits which become a part of it, the following terms have the following meanings:

1.1 Business Day shall mean Monday through Friday, between 8:00 a.m. and 5:00 p.m. PST, excluding UCSD and Seller observed holidays and closures. Seller shall notify UCSD thirty (30) Days in advance of the date of any physical inventory closure and shall provide UCSD a Seller holiday schedule on or before January 3 for that calendar year.

1.2 Account Manager and Management Team shall mean the Seller’s employee, satisfactory to UCSD, whom Seller designates to UCSD as the person with overall responsibility of managing the UCSD/Seller relationship under this Agreement. Seller’s Account Management Team is included as an attachment to this Agreement. See Attachment 3. This Team includes Seller’s representatives responsible for managing the entire relationship and procure-to-pay cycle between UCSD and Seller.

1.3 Contract Items shall mean all those Products sold by Seller where the Product is listed in a contract between UCSD and Novation, and where the Product cost to UCSD, prior to application of the agreed upon mark-up, has been verified to Seller by the manufacture or supplier. UCSD agrees to reasonably assist Seller as required to verify UCSD’s pricing with the manufacturer or supplier.

1.4 Non-Contract Items shall mean any Product sold by Seller that is not a contract item.

1.5 Products shall mean, collectively, all Contract Items and Non-Contract Items sold by Seller to UCSD.

1.6 Delivery shall mean the transportation, electronically or otherwise, of Products by Seller to UCSD from Seller’s location directly to the location designated by the UCSD Department ordering Products.

1.7 UNSPSC shall refer to the United Nations Standard Product and Services Code. See <http://www.unspsc.org> for more information.

1.8 Delivery Accuracy shall mean the percentage of items on a purchase order that were shipped to the location stated on the purchase order the first time.

1.9 Backorder Percentage shall mean the total quantity of each item ordered that went on backorder status during last quarter.

1.10 Lead Time shall mean the length of time between the date the Purchase Order was sent to the Seller until the date the Product was received.

1.11 Quote Turnaround Time shall mean the time between the request of quote by UCSD and the response to the quote by the Seller.

1.12 Invoicing Accuracy Percent shall mean the percent of all invoices that were sent to UCSD and considered accurate, valid and uncontestable.

1.13 Billing Error Correction Percent shall mean the percent of billing/invoice errors that were corrected by the Seller within thirty (30) Days of notification of the error by UCSD where Seller concedes that billing/invoice error was made by Seller.

1.14 Regulated Materials include: toxic and highly toxic gases that are regulated under California Fire Code; materials included on "List of Controlled Substances, Schedules I through V" described in the Controlled Substances Act (Title 21 Code of Federal Regulations (CFR) Part 1300 to 1308); radioactive materials; section 302 Extremely Hazardous Substances; human or old world primate tissue; "infectious" and "select" agents; carcinogens; Homeland Security Watch list items; and all other chemical(s), material(s) and/or substance(s) that government agencies may require reporting from UCSD in the future.

1.15 Drop Ship Orders shall mean those orders that are shipped directly from the manufacturer or supplier to the Customer, that don't pass through the PHS warehouse and distribution system.

2. SCOPE AND PROGRAM REQUIREMENTS

2.1 Scope

Seller agrees to extend the terms and conditions of this Agreement, including pricing, to all current and future UCSD campus departments and locations. The UC San Diego Campus Profile (Attachment 4) contains general campus information as well as links to policies and other requirements that all UCSD suppliers must adhere to in order to successfully conduct business on our campus.

2.2 Description of Program

During the term of this Agreement, and any extension(s) of such term, Seller agrees to sell to UCSD Products, subject to the terms and conditions set forth in this Agreement and its Attachments.

2.3 Program Management

The Seller shall be directly responsible to ensure that all of the duties, requirements and Product support detailed in the Scope and Program Requirements (§ 2) are met.

2.4 Program Administration

Seller shall provide the following to ensure proper program administration on campus:

- a. Account Manager to coordinate program implementation and provide on-going contract monitoring and maintenance.

- b. On-site sales representation on a regular basis to collaboratively increase sales activity, promote UCSD's eProcurement system as the preferred ordering channel, assist in resolving problems, handle credits and provide other customer services as required for the efficient operation of the program.
- c. A program for regularly monitoring and comparing UCSD pricing with pricing available from competitors in the University of California market.
- d. Supplier Business Review (SBR) meetings between Seller's Account Managers and UCSD Procurement & Contract Departments to discuss activities and resolution of any open issues.
- e. Regular communication channels to keep UCSD apprised of any quality issues including recalls, upgrades and Product warnings that may affect Product performance.

2.5 Order Management and Customer Service

It is preferred that the Seller provide a dedicated toll-free number for UCSD customer service. Seller shall provide the ability to receive UCSD orders through manual and/or automated methods, including, but not limited to, telephone, fax, EDI and internet. Any changes or modifications to the agreed upon buying processes will not be implemented without advance written approval from UCSD Procurement & Contracts Senior Management.

2.6 Binding Nature of Purchase Order

Purchase Orders that state pricing that reflects the latest proper price file upload pursuant to § 4 shall be deemed accurate and shall be binding as to Product pricing only, when they are received by an authorized representative of Seller. Each such order for any Products covered by this Agreement and all documents issued as a result thereof, shall be governed by this Agreement. Each order shall specify the quantity, description, price and delivery point. Except where the parties have mutually agreed upon otherwise in writing, the terms and conditions of each party's purchase orders, invoices, acknowledgments/confirmations or similar documents shall not apply to any order under this Agreement, and any such terms and conditions on any such document are objected to without need of further notice or objection.

2.7 No Substitutions

No substitutions of alternate items for Products ordered will be permitted except with the express approval from authorized UCSD personnel. The Seller may not substitute or interchange a different brand or generic Product or package size, other than the specific Product ordered, without authorization.

2.8 Minimum Order

There shall be no minimum order requirement unless directly specified to receive a special bulk or multi-quantity discount quote.

2.9 Out of Stock Product Procedure

If there is an out of stock situation of any ordered Product(s), the out of stock item will be added to the back order file and will be delivered to UCSD as soon as the Product is in stock without further orders being submitted.

2.10 Purchase Order Reference

All invoices, packing lists, packages, shipping notices and other written documents shall contain the applicable UCSD purchase order number.

2.11 Order Packaging and Labeling

Each order shall be delivered with a packing slip with, at a minimum, the following information:

- a. Purchase order number
- b. Product description
- c. Catalog or item number of Products ordered
- d. Quantity
- e. Open 15-character field for internal identification
- f. Number of packages and the total number of packages for the order if more than one (e.g. Box 1 of 3)
- g. Any of the following end-user information if available:
 - i. End-user name
 - ii. Building
 - iii. Room number
 - iv. Department
- h. Other information, as requested by the ordering department.

Packing slips for boxes shall be secured to the outside of the package such that it can be inspected by UCSD by the requesting department or central receiving. Packing slips for totes shall be inside the first box of each order, and a self-adhesive label will be applied to the outside of each tote identifying the UCSD purchase order number, the tote number and the total number of totes in the order, and the UCSD end-user name and location where the tote is to be delivered.

2.12 UCSD Current Invoicing Requirements

- a. Seller's invoices must clearly indicate the following information:
 - i. California sales tax as a separate line item
 - ii. Purchase Order number and Agreement number
 - iii. Description, quantity and item number of the Product ordered
 - iv. Net cost of each Product
 - v. Reference to original order and invoice numbers for all credit invoices issued
 - vi. Level 3 purchasing card information, in the case of Express Card orders
- b. Invoices are to be submitted directly to the UCSD Disbursements Department unless the Seller is notified otherwise in writing by an amendment to this Agreement.
- c. Invoices will be paid within thirty (30) Days of the date of the invoice, which is the date the Products were shipped. UCSD agrees to timely pay the undisputed amount of each invoice.
- d. Seller agrees to continue shipping Product to UCSD locations, even though there may be a good faith dispute regarding payment of some or all of a pending invoice.

2.13 Credits

- a. Credit memos for cancellations or disputed prices will be issued to UCSD within five (5) business days and will reference the original invoice and purchase order number
- b. All returns shall be coordinated through the individual UCSD department or central receiving.

2.14 Hazardous Materials and Material Safety Data Sheets (MSDS)

- a. Seller warrants that materials transported herein which have been classified by the Department of Transportation as a hazardous material for the purposes of transportation will be packaged, marked, labeled and shipped in accordance with the provisions of Title 49, Code of Federal Regulations, Parts 100 through 199, as amended.
- b. Seller shall retain title and/or ownership and responsibility for hazardous materials delivered in error at all times.
- c. The University will charge the Seller two (2) times the University's cost to properly dispose of hazardous waste generated during shipment because of damage to chemical containers.
- d. Seller shall provide MSDS for any Product ordered electronically in AOS compatible format and in paper or other electronic formats as requested. Any applicable MSDS should be included with each shipment of Product to ensure proper handling upon receipt.

2.15 Standard Delivery Requirements

Seller agrees to deliver all UCSD orders received by 3:00 p.m. PST the day prior to the ship day to the designated UCSD delivery point on the next regularly scheduled ship day. Currently the scheduled ship days are Monday, Wednesday and Friday.

2.16 Business Delivery Models

UCSD end user departmental orders will be placed directly with Seller requesting delivery by Seller to either a specific direct ship to address (e.g. building, lab, room etc.) or to UCSD's Central Receiving dock at 7835 Trade Street (<http://blink.ucsd.edu/facilities/services/receiving/address/index.html>). Product should always be packaged for receipt directly by the end user. If Seller provides package Delivery using their own vehicles, Seller is responsible for any applicable costs, including but not limited to parking permits, annual dock access, etc.

2.17 Environmentally Responsible Packaging

Seller agrees to use good faith efforts to utilize environmentally responsible packaging and recycling practices to minimize the adverse effects of packaging on the environment. UCSD has a goal to become a zero-waste campus by the year 2020, therefore Seller agrees to work with UCSD on programs to take back or eliminate packaging waste from Products delivered to campus.

2.18 Freight

- a. For standard Delivery (generally the next regularly scheduled ship day after receipt of order), excluding delivery of capital equipment and drop ship orders, freight terms shall be F.O.B. destination with freight prepaid and allowed. This means:

- i. Seller retains title and control of goods until they are delivered to the University destination as specified on the order, at which point ownership of goods is transferred to the University.
 - ii. Seller selects carrier, assumes risk of transportation and files claims for any loss or damages.
 - iii. Seller pays and bears freight charges.
 - iv. UCSD will bear the expedited delivery cost for rush Deliveries requiring a third party expedited freight service unless the expedited freight is required due to Seller's mistake or negligence or the shipment includes perishable Products that typically have to be Delivered using an express shipment.
 - v. On capital equipment deliveries and drop ship orders, freight charges will be prepaid by Seller, and added to the invoice as a separate line item.
 - vi. Seller provides palletized delivery of bulk product to locations as specified by Customer. All pallets will remain the property of Seller. While there is no upfront charge for pallets, a charge of \$7.50 will be assessed for each Seller provided pallet not returned to Seller.
 - vii. Seller will be responsible for providing tote bins for those special delivery programs requiring them. Currently Seller is not providing any tote deliveries to UCSD. However should Seller begin using totes, Seller will invoice UCSD for the replacement cost of these tote bins at Seller's cost, (currently \$22.50 each but subject to change) if any of the tote bins are found to be missing, damaged or otherwise determined to be unusable by Seller upon their retrieval. Each tote bin shall be packaged and clearly marked with a format agreed to by UCSD. All tote bins shall be dirt and dust free to protect supplies. All Seller totes have interlocking lids to accommodate stacking and a dust free environment. Seller agrees to notify the UCSD Strategic Sourcing Department at purchasinginfo@ucsd.edu should Seller begin using totes for deliveries to UCSD
- b. Seller must itemize freight and service charges separately from Product and apply taxes only as is appropriate per the California State Board of Equalization tax guidelines. If requested, any non-taxable shipping charges (e.g. UPS or other third-party freight charges) must be separated from taxable shipping (e.g. handling charges or deliveries via a Seller-owned truck). Under any event UCSD will be responsible for any sales taxes properly due whether billed on the original invoice or due as a result of an examination by the State Board of Equalization.
 - c. UCSD reserves the option to implement the UC Inbound Freight Program and designate the selected carrier to Deliver Seller's Products to campus, should Seller not use its own trucks to deliver Seller's Products to campus and at no additional cost to Seller. UCSD and Seller shall work together with the UC carrier to facilitate the transition to this program if requested. This will include, but is not limited to, providing freight expense reporting, Seller enablement meetings, compliance guidelines, etc.

2.19 Surveys

Seller shall, at UCSD's request, conduct customer surveys of UCSD orders through questionnaires developed by UCSD that are sent electronically with order confirmations or inserted into delivery packages. UCSD shall be responsible for the tabulation of these surveys.

2.20 Inventory Where UCSD has requested that Seller maintain an inventory of a particular Product on hand exclusively for ordering by UCSD, the parties agree to execute a separate stocking agreement regarding this inventory request for each Product inventory item so requested. A proposed version of the stocking agreement is attached hereto, designated as Exhibit D, and made a part hereof.

3. E-COMMERCE REQUIREMENTS

If applicable, the terms of the UCSD Marketplace Electronic Commerce (eCommerce) Requirements, Attachment 2, are hereby incorporated.

4. PRODUCT AND PRICE MANAGEMENT

4.1 No Mandatory Use Policy

Seller is advised that there is no mandatory use policy at UCSD. The Seller must compete with other vendors for departmental orders.

4.2 New Products and Contract Items

UCSD recognizes that additional Contract Items may need to be added to UCSD's hosted eProcurement content in order to meet campus customers' needs during the course of this Agreement. Seller may also add entirely new Products to its offering that UCSD customers may want to procure during the term of this Agreement. New Product pricing and additions to the Contract Item list will be considered under the following methods:

- a. New Products will be categorized with similar Contract Items or Product lines into existing Product line families/UNSPSC/replacement line items previously defined and agreed to by UCSD with respect to the discount structure, net price or total cost of the Product.
- b. In the event the Seller adds a new specialty Product line which represents Products that are substantially different from the Products or brands represented in the existing market commodity codes/Product line families/line items, UCSD and the Seller may enter into negotiations to establish a discount structure, net price or total cost for the Product(s) if UCSD agrees that the Product(s) are not covered under an existing market commodity code/Product line family/line item and are not in conflict with another awarded Agreement. The Seller will provide appropriate documentation to support its position for special pricing. Negotiations must be completed prior to any purchase orders being processed. In the event that UCSD and Seller cannot come to agreement, UCSD may at its sole opinion conduct a separate formal bidding process.
- c. Requests to add additional Contract Items will be reviewed and approved by UCSD's Strategic Sourcing Senior Manager prior to the submission of a new eCommerce price file. Files submitted with new items or services that have not been approved will be rejected or those items will be manually removed at UCSD's discretion.

4.3 Discontinued Products

Seller shall notify UCSD sixty (60) Days in advance of any Contract Items being discontinued to the extent Seller receives such notice from the manufacturer. If Contract Items are replaced or removed without proper notification, Seller must supply those Contract Items, to the extent they are available to Seller for resale, until the sixty (60) Day notification period is satisfied, unless otherwise agreed to between Seller and UCSD. Replacement of any discontinued Contract Item should be offered to the UCSD at the same price structure or better of the original Contract Item. Quality Control test data may be requested to confirm the suggested Products will be adequate substitutes.

4.4 Pricing Policy

This agreement supersedes any and all prior agreements for distribution. Pricing for all Contracted Items will be sold at a mark-up of 16.5% across all UCSD locations subject to this Agreement.

Pricing for Non-Contracted Items will be sold at a mark-up of 20%.

Any pricing extended to a single facility shall be extended to all affiliated facilities purchasing under the terms of this Agreement.

Should any purchase be made using an Express Card (UCSD purchasing card), the mark up percentage shall be increased by 2%.

4.5 Return Goods Policy

Seller will accept returns from UCSD upon full compliance with the following conditions.

A. UCSD must first contact their Seller Sales Representative or any of Seller's Customer Service Representatives to obtain a Return Goods Authorization ("R.G.A.") Pick-up Number. Any Product received by Seller without prior authorization will be returned to UCSD without credit.

1. Contract Items may be returned to Seller without a restocking charge if:
 - (i) The request for return is made within thirty (30) days of the date of receipt of the item;
 - (ii) The item to be returned is in its original carton and/or packaging; and;
 - (iii) The item is in a clean and resalable condition.
2. Where an R.G.A. for a Contract Item is requested by UCSD more than thirty (30) days after the date of delivery, Seller reserves the right to refuse to accept the return for any reason including, without limitation, where that stock item may be subject to expiration, obsolescence or discontinuation. Any Contract Item that is accepted by Seller for return more than 30 days from its date of delivery will be subject to a 15% restocking fee.

B. All items that are considered by Seller to be Non-Contract, exclusive or special order items must have the vendor or manufacturer's approval prior to return. Seller will not accept for return any Non-Contract, exclusive or special order item that is not first deemed returnable by the vendor or manufacturer for credit. Credit to UCSD will be less any restocking fee and freight charges incurred by Seller as a result of the return, and only given after Seller first receives credit from the vendor or manufacturer.

C. Seller will accept for return, without a restocking charge, all Products which Seller determines were shipped to UCSD by Seller in error, as long as that error was reported to Seller within forty-eight (48) hours of receipt of the item

D. Seller will accept for return, without a restocking charge, any item which Seller determines to be defective. Seller will issue a credit to UCSD in an amount not to exceed the purchase price of the defective item, once Seller has received a credit from the vendor or manufacturer of the defective item.

E. Seller agrees to use reasonable efforts to assist UCSD in returning items deemed obsolete or no longer used due to technological changes, to the vendor or manufacturer, at UCSD's expense. However Seller will only issue a credit to UCSD if Seller has first received a credit from the vendor or manufacturer. The credit issued to UCSD will be in the amount of the credit received from the vendor or manufacturer, less any expenses incurred by Seller in assisting with the return of the item.

4.6 Unit of Measurement Changes

Seller shall notify UC thirty (30) Days in advance of any unit of measurement changes to Products to the extent Seller receives such notice from the manufacturer.

4.7 Price Protection

Seller will strive to provide UCSD a monthly price update at least ten (10) days before the first business day of the following month, provided Seller has first received the information from Novation and pricing confirmation from the manufacturer or supplier. Late price updates from Novation or price change confirmation from the manufacturer or supplier will be forwarded to UCSD upon receipt by Seller. Price increases for any Contract Items will be supported by documented evidence of Novation's price increase and manufacturers' or supplier's price increase confirmation where requested by UCSD. UCSD shall benefit from any lower cost to Seller on Products offered to other universities, hospitals, government agencies or entities where the economic and service requirements are substantially similar. If the Seller's cost on Products is reduced, UCSD shall benefit from a corresponding price reduction.

4.8 Manufacturer Price Decreases

Seller shall pass on manufacturer price decreases on Products to the University immediately. Further, Seller will provide notice to UCSD of all such price changes in a timely manner.

4.9 Catalog Updates

Seller will present pre-approved catalog updates to UCSD a minimum of seven (7) Days before the mutually agreed upon effective date.

4.10 Price and Invoice Accuracy Expectations

- a. UCSD is responsible for pricing accuracy. Seller will provide accurate and timely pricing data to UCSD to the extent such pricing is made available to Seller by manufacturers. There shall not be any price discrepancies between the most current UCSD Agreement prices and invoices prices.

- b. Pricing updates will be scheduled after collaboration between UCSD and the Seller. Seller will honor negotiated Contract Item pricing as of the agreed upon effective date of this Agreement. Notwithstanding anything to the contrary in this agreement, UCSD agrees to pay any price increases upon the effective date from Novation, provided Seller has used its best efforts to notify UCSD of such increases.
- c. Seller will use its internal resources to expeditiously resolve any invoice mismatches and present accurate invoices, credit memos and other resolution means to UCSD. UCSD agrees to timely pay the undisputed amount of all invoices.

4.11 Promotions

- a. Seller may offer promotions supportive of its efforts to sell Products under this Agreement, either independently or in coordination with particular manufacturers or other distributors, provided that such promotions are offered by the Seller to its customers generally.
- b. Seller may only offer promotions that are specific to UCSD with UCSD's prior written authorization. Sponsorship of certain industry or Product specific events is allowed. Seller is to work in conjunction with campus Strategic Sourcing to obtain appropriate levels of approval for events of that nature. UCSD-specific promotions, as well as industry events must comply with "Professional and Ethical Conduct" policies. See § 9.8.
- c. With regard to any promotional awards available to UCSD end users, Seller agrees to ensure that any approved promotion makes available free Product(s), credit(s) on Product purchases or other business-related award(s) in lieu of awards, gifts or giveaways that are personal in nature, including, but not limited to clothing, personal electronic equipment, retail gift certificates or similar items.

5. CUSTOMER SATISFACTION AND SERVICE STANDARD METRICS

Seller shall provide consistent exceptional customer service to all UCSD customers. The following chart outlines the baseline expectations of UCSD for standard service metrics. It is necessary that these minimums be upheld throughout the term of the Agreement and that Seller provides reports on these benchmarks during every Supplier Business Review (SBR). UCSD has means to determine their internal level of customer satisfaction and these self-reports are substantiating indicators. If Seller falls below the service level expectations it will be escalated to UCSD's Strategic Sourcing Senior Manager and up to UCSD's Director of Procurement & Contracts (if necessary) to determine a mutually agreed upon corrective action plan to resolve the concern. If the service levels do not improve to the satisfaction of the University the issue may ultimately result in termination of this Agreement. The minimum quality of service standards set forth below recognize that occasional errors are likely; however, Seller further agrees to use best efforts to achieve 100% quality of service level.

Normal Lead Time	96% on next scheduled delivery day after receipt of order, for Contract Items if order placed by 3:00 p.m. PST 96% on second scheduled delivery day after receipt of order, for all Non-Contract Items if order placed by 3:00 p.m. PST
Returns	30 Days from date of confirmed Delivery to end user
Rush Delivery Requests	96% within 4 hours of receipt of order or as directed by purchaser

Returns Pick-up	98% within 3 Days from notification (no charges apply)
Credits/Reinvoice	98% within 5 Business Days from return pick up, for Contract Items
Requests for Reports	within 5 Business Days for standard reports
Delivery Accuracy	98% (correct item, place, UOM and quantity)
Scheduled Delivery, On-time	98%
Invoicing/billing Accuracy	98% (invoice matches purchase order and agreement price, items with incorrect pricing due to UCSD error shall be excluded from the calculation of this ratio)
Customer Service Satisfaction	95%
Quote Turnaround Time	Within 1 Business Day
Backorder Percentage	Less than 2% of PO lines Zero stock or partial ship require notification to end user within 24 hours
Return Customer Calls	Within 2 hours
Billing Error Correction	100%

6. REPORTING

Seller shall report annual sales by dollars, by volume and by part number with associated UNSPSC ninety (90) Days prior to annual price review.

6.1 Activity Reports

- a. Seller agrees to provide the following periodic reports regardless of whether a business review or meeting is scheduled:

Report	Frequency
<u>Total Sales Detail:</u> Total sales by part number in both quantities and dollars, noting UNSPSC code and/or commodity category	Quarterly to UCSD Data is due regardless of whether or not a business review is held Annual to UCSD Ninety (90) days prior to each annual price review.
<u>Hard and Soft Savings:</u> Line item savings from this Agreement as compared to standard/similar higher ed prices, special project savings, freight savings to UCSD and any soft dollar efficiency savings	Quarterly to UCSD Data is due regardless of whether or not a business review is held
<u>Earned Incentive Detail:</u> Show Earned Incentive calculation with line item details per purchase order or invoice stating the UCSD fiscal year quarter and time period covered	Quarterly with each payment
UCSD Sustainability Report: Sales of "green" products (Energy Star,	Seller does not currently track the sale of "green" products; however Seller agrees

Green Seal, Green Guard, recyclable, recycled content) by item and percent of total sales.	to use its best efforts to provide the Sustainability Report once it does begin tracking green products.
<u>Price Adjustment Proposal</u> : Line item proposed price increases, Product additions and deletions, UOM / pack count changes, etc.	Monthly for price adjustment negotiations
<u>Catalog Update Proposal</u> : Line item Product additions and deletions, UOM / pack count changes, price reductions, etc.	Periodically for updating hosted eCommerce catalogs
<u>Service Standards Tracking Reports</u> : - See Section §5 for additional details	Quarterly or as required for SBRs

- b. Reports and presentations should be submitted at least five (5) days prior to any scheduled SBR to allow time to review.
- c. Seller agrees to provide other reports as reasonably requested by UCSD during the term of the Agreement at no additional cost to UCSD.

6.2 SBR Meeting Format and Instructions

UCSD seeks to obtain the most value from each SBR, for both UCSD and Sellers. In order to do so, UCSD generally expects the following to be included in any SBR presentation as directed by Procurement & Contracts and in addition to the reports listed in §6.1:

- a. Sales Data Trends
 - i. UC Fiscal Year to Date (beginning July 1)
 - ii. UC Fiscal Year to Date for the previous year
 - iii. Most frequently purchased Products and Contract Items
- b. New & Deleted Product Offering
- c. Outreach and promotions
 - i. Meetings with end users
 - ii. On campus promotions
- d. Accounting Issues
 - i. Past due invoices
 - ii. User issues
 - iii. Invoice mismatches
- e. Hard and Soft Dollar Savings Achieved
- f. Continuous Improvement Suggestions

6.3 Chemical Tracking and Hazardous Database

Seller shall not sell chemicals or hazardous materials to UCSD campus customers and therefore will not need to provide UCSD's Office of Environmental Health and Safety department an annual report of chemicals sold to campus.

6.4 Regulated Materials

- a. Seller shall provide specific information to UCSD's Office of Environmental Health and Safety (or equivalent) whenever a Regulated Material is purchased.
- b. If an order is placed for Regulated Material, the Seller is required to provide UCSD's Office of Environmental Health and Safety (or equivalent) the following information:
 - i. Name of purchaser, department, address and phone number
 - ii. Identification and description of the Regulated Material
 - iii. Quantity of each Regulated Material
 - iv. CAS Number of Regulated Material

7. UC – SELLER COMMUNICATIONS

7.1 Conduct Relating to Communications

- a. All messages, information and other items communicated from Seller to UCSD shall be professional and consistent in nature.
- b. Communications that are distributed on campus shall be approved by Procurement & Contracts management prior to submission to the campus.
- c. The Seller agrees to hold supplier business reviews (SBRs) with UCSD Procurement & Contract team members that may be open to UCSD commodity experts, supply chain partners and/or customers.

7.2 Spam

Sellers are prohibited from sending unsolicited promotional emails to any UCSD customer or UCSD email address.

8. EARNED INCENTIVES

During the term of this Agreement, and any extension(s) to such term, Seller agrees to provide UCSD a quarterly Earned Incentive in the amount equal to two (2) percent of the total sales of its Products. The Earned Incentive shall only apply to those sales made under the terms of this Agreement, and no others. The amount of quarterly Earned Incentive provided to UCSD will be calculated based on the total quarterly invoice payments received by Seller. Seller will report to UCSD a detailed calculation that shows total overall sales, the amount of any excluded sales, and the sales subject to the incentive with each payment. The Patronage Incentive will either be sent via ACH per UCSD requirements or be issued as a check to The Regents of the University of California and mailed to:

Laura Osante
UC San Diego
Controller's Office

9. GENERAL TERMS AND CONDITIONS

9.1 University of California Terms and Conditions of Purchase

The University of California Terms and Conditions of Purchase, Appendix A as amended on July 1, 2011 specifically for this Agreement, Exhibits A-C and Supplements 5 and 5.1, as attached, are hereby incorporated and shall govern this Agreement.

9.2 Term of Agreement

The initial term of this Agreement is for a period of two (2) years. UCSD may, at its option, extend or renew the Agreement for two (2) additional two-year periods upon the same terms and conditions.

9.3 Termination of Agreement

UCSD may terminate this Agreement for cause or for convenience, in whole or in part with a written one hundred and twenty (120) Day notice without penalty. Seller may terminate this Agreement only for cause, in whole or in part, with a written one hundred and twenty (120) Day notice without penalty.

If termination of this Agreement takes place, Seller shall extend to UCSD, upon UCSD's request, an additional ninety (90) day period to properly implement a smooth transition. Fees for goods purchased and for services rendered during the additional ninety (90) days will be negotiated in good faith between UCSD and Seller.

9.4 Audit Requirements

This Agreement and any resulting orders shall be subject to examination and audit by the University and the State of California. Any audit conducted by UCSD shall be for a time period that begins no earlier than twelve (12) months before the start of the audit. Any audit by an agency other than UCSD shall be for a time period that begins no earlier than thirty six (36) months before the start of the audit. The examination and audit shall be confined to those matters connected with the performance of the Agreement, including but not limited to, the costs of administering the Agreement for all business with UCSD.

9.5 Marketing References

The Seller shall be prohibited from making any reference to the University, in any literature, promotional material, brochures or sales presentations without the express written consent of UC San Diego.

9.6 Product Certification

The Seller certifies and warrants that all Products sold to UCSD under this Agreement:

- a. Shall be new and genuine;
- b. Shall be provided to UCSD in the Manufacturer's original packaging, unless otherwise requested by UCSD;
- c. Shall be manufactured and sold or distributed to the Seller for retail sale in the United States;

- d. Shall be sold to the Seller from legal and reputable channels, which are understood to be the Manufacturer or authorized representatives of the Manufacturer;
- e. Shall not be altered or misbranded by Seller within the meaning of the Federal and State laws applicable to such Products; and
- f. PHS represents that it only purchases products from domestic suppliers that are subject to federal, state and local laws regarding employment.

9.7 Insurance Requirements

If work is to be performed on University premises Seller shall furnish a certificate of insurance acceptable to UCSD (see Appendix "A", Article 17). All certificates shall endorse the Regents of the University of California as an additional insured. The certificate must be submitted to the UCSD Procurement & Contracts Department prior to the commencement of services and should be delivered to:

University of California, San Diego
Procurement & Contracts Department
Attn: Kalyn McCain
9500 Gilman Drive #0914
San Diego, CA 92093-0914

9.8 Professional and Ethical Conduct

- a. For the purpose of this Agreement, the standards of conduct to which the Seller, UCSD and their respective employees and agents are held shall, at all times, consist of appropriate and ethical behavior. In addition, all Seller/UCSD interactions must adhere to all Federal and State laws as well as UC Systemwide and UCSD location policies which govern said interactions. Governing laws and policies include, but are not limited to, the California Political Reform Act of 2001, The State Fair Political Practices Act, UC Business & Finance Bulletin G-39 and any applicable departmental policies.
- b. If any unethical behavior is not corrected (i) to the University's satisfaction, the University reserves the right to insist that the offenders be dismissed from the account, banned from UCSD and be replaced with another of equal technical skill at no additional cost to the University; or (ii) to Seller's satisfaction, Seller reserves the right to insist that the offenders be relieved of further interaction with Seller's employees or agents or to reassign its employees or agents subjected to such behavior.
- c. Seller's representatives shall not smoke inside or within 20 feet of UCSD buildings or areas restricted for smoking (1 Cal. Gov. Code Div. 7, Sec. 1, Ch. 32, §7596 (a)) and shall not consume alcohol beverages nor be under the influence of alcohol while on duty. Use of illicit drugs while on duty by personnel employed by Seller shall be cause for immediate removal of employee from University property.
- d. It is essential that UCSD and Sellers avoid any conflicts of interest or the appearance of a conflict of interest in order to protect the integrity of UCSD's decision making processes. To this end, UCSD prohibits Sellers from furnishing any gifts (including food or parties) that are personal in nature or could be construed as personal in nature. Any marketing materials,

event materials, or marketing plans which are to be executed at a UCSD location must be approved by Procurement & Contracts office prior to execution. See §7 for additional clarification on communication requirements.

9.9 Time of the Essence

Time is of the essence with respect to the performance of each and every condition, covenant and agreement contained herein. UCSD has the option to accept or reject all Products delivered after promised delivery time, and, in addition, may hold Seller liable for all direct damages caused by late delivery as determined and documented by UCSD; provided, however, in no event shall the amount of such direct damages exceed UCSD's documented replacement/substitution cost for Products ordered.

9.10 Warranties

- a. Seller agrees that the Products furnished under this Agreement shall be covered by such warranty as is offered by the original manufacturer or supplier of the products, which Seller shall pass through to UCSD.
- b. SELLER MAKES NO WARRANTIES RELATING TO THE PRODUCTS OR SERVICES TO BE PROVIDED, EXPRESS OR IMPLIED, AND EXPRESSLY EXCLUDES ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, APPLICATION OR USE. NO PERSON IS AUTHORIZED TO MAKE ANY WARRANTY OR REPRESENTATION CONCERNING THE PRODUCTS AND SERVICES PROVIDED, OTHER THAN AS PROVIDED IN THIS SECTION. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED.
- c. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE SOUGHT BASED ON CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE AND STRICT LIABILITY) OR OTHER FORM OF ACTION. ANY LIABILITY OF SELLER TO UCSD SHALL BE LIMITED TO THE PRICE AND FEES PAID BY UCSD FOR THE PRODUCTS AND/OR SERVICES WHICH ARE SUBJECT OF SUCH LIABILITY.

10. 11 Amendments

Any changes to the Agreement requested by either party shall be effective only if mutually agreed in writing by duly authorized representatives of UCSD and Seller. This Agreement shall not be modified or amended or any right of a party waived except by such written amendment.

10.12 Failure to Enforce

Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

10.13 Partial Invalidity

Any provisions of this Agreement that shall prove to be invalid, void, or illegal shall in no way impair, or invalidate any other provisions hereof, and such other provisions shall remain in full force and effect.

10.14 Relationship

Seller shall have no power to bind UCSD and shall not, under any circumstances, be considered to be an agent, representative or fiduciary of any or all of the proceeding. Instead, Seller is an independent contractor and neither it nor its employees, agents, contractors or subcontractors are or will be an employee, agent or representative of UCSD during the period it and/or they are performing services under this Agreement. Seller acknowledges its responsibility for the full payment of the wages or other compensation of, as well as any benefits for employees, agents, contractors or subcontractors engaged by it in the performance of this Agreement

This Price Schedule Agreement, together with the above named instruments, constitute the entire agreement between the UCSD and Seller with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications and understandings.

IN WITNESS WHEREOF, the parties hereto have caused this Price Schedule Agreement to be duly executed as of the date first above written, such parties acting by their officers being thereunto duly authorized.

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, ON BEHALF OF THE
SAN DIEGO CAMPUS

PROFESSIONAL HOSPITAL SUPPLY, INC.

Signature

Nicole R. Lamb
Name, printed or typed

Strategic Sourcing Senior Manager
Title

July 8, 2011
Date

Signature

Name, printed or typed

Title

Date

UCSD PRICE SCHEDULE AGREEMENT #4110/SD/002

ATTACHMENTS

University of California - Terms and Conditions of Purchase (as amended on 07/01/2011)	Appendix A
Special Terms and Conditions for Federal Government Contracts	Supplements 5 & 5.1
Pricing List	Attachment 1
UCSD Marketplace Electronic Commerce Addendum	Attachment 2
Supplier Enablement Checklist Requirements	Attachment 2a
Supplier Integration Specification cXML Integrations	Attachment 2b
Vendor Account Management Team	Attachment 3
Annual Price Negotiation and Catalog Loading Process	Exhibit P-SD
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions	Exhibit A
Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	Exhibit B
Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters (First Tier Subcontractor)	Exhibit C
Example Stocking Agreement	Exhibit D