
1. APPLICATION OF TERMS AND CONDITIONS

- 1.1 The Supplier is deemed to have accepted these terms and conditions when the Supplier accepts and carries out the Order by its conduct or by oral or written communication. These terms and conditions (together with the Order and any specifications recorded in or referred to in the Order) represent the entire agreement between the Purchaser and the Supplier.

2. TITLE AND RISK

- 2.1 Title to and the risk in any Goods ordered pursuant to this Order does not pass to the Purchaser after payment. Title will pass to the Purchaser after the Goods have been accepted by the Purchaser.

3. INSPECTION AND REJECTION

- 3.1 Goods delivered in accordance with this Order are only accepted when they have been inspected by an authorised representative of the Purchaser.
- 3.2 Acknowledgment of delivery by or on behalf of the Purchaser does not constitute acceptance of the Goods for the purposes of these terms and conditions.
- 3.3 The Purchaser may reject any Goods, even after they have been accepted, if they are defective or are not in accordance with the Purchaser's specifications or do not meet the purpose for which the Purchaser purchases them.
- 3.4 Any payment made for Goods prior to inspection will not constitute acceptance and the Supplier must refund to the Purchaser any payment made in respect of Goods (including transportation costs) immediately on receipt of advice of rejection.
- 3.5 Rejected Goods will be held entirely at the risk of the Supplier. Rejected Goods must be removed by and at the expense of the Supplier within 7 days of the Supplier being notified of the rejection. If the Supplier fails to remove the Goods, the Purchaser may remove the Goods, or arrange removal of the Goods, at the Supplier's cost.

4. RECALL

- 4.1 The Supplier must promptly notify the Purchaser if any of the Goods are either:
- (a) the subject of a mandatory recall order or direction; or
 - (b) intended to be subject to a voluntary recall, in which case the Supplier must provide the Purchaser with at least 3 Business Days' notice.
- 4.2 The Supplier will bear the costs of any recall.

5. DELIVERY

- 5.1 Deliveries must be made as specified in this Order and the Purchaser will not be required to accept or pay for quantities in excess of that set out in this Order.
- 5.2 The Purchaser accepts no responsibility for any Goods delivered to locations or at times other than those specified on this order.
- 5.3 Unless specified on order, deliveries must be made to the receiving dock located at the rear of the main hospital building at 10 Village Avenue, Traralgon West Vic 3844 between 7:00am and 3:00pm, Monday through Friday (except public holidays).
- 5.4 Unless otherwise agreed in writing, all costs of delivery must be borne and paid by the Supplier. The Supplier must also bear the costs of insuring the Goods under a goods in transit policy with a reputable insurer authorised under the *Insurance Act 1973* (Cth).
- 5.5 All Goods delivered must be accompanied by a delivery docket detailing the official Purchase Order number, and/or an advance shipping notice (if requested by the Purchaser), the description and quantity of Goods, and any other information required by the Purchaser.

6. INTELLECTUAL PROPERTY

- 6.1 The Supplier irrevocably and unconditionally grants to the Purchaser a non-exclusive, perpetual, royalty free, worldwide and transferable licence (including the right to sublicense) to use any Intellectual Property Rights in relation to any Goods supplied to the extent necessary to allow the Purchaser the full use and enjoyment of those Goods and the Supplier must, upon request by the Purchaser, do all things as may be necessary (including executing any documents) to give full effect to such rights.
- 6.2 Any information, text, drawings or any other material (Data) given to the Supplier by or on behalf of the Purchaser remains the property of the Purchaser. The Supplier must only use the Data to the extent necessary to perform its obligations under these terms and conditions.

7. TERMINATION

- 7.1 The Purchaser may terminate the Agreement with immediate effect (or with effect from a specified date) by giving notice in writing to the Supplier if the Supplier:
- (a) fails to provide the Goods in accordance with the Agreement;
 - (b) breaches any provision of the Agreement and, where that breach is capable of remedy, fails to remedy the breach within 10 Business Days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
 - (c) breaches any provision of the Agreement that is not capable of remedy;
 - (d) or any of its Personnel involved in the supply of the Goods commits fraud, dishonesty or any other serious misconduct;

- (e) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State; or
 - (f) suffers from an Insolvency Event.
- 7.2 If the Agreement is terminated pursuant to clause 7.1, the Purchaser will pay the Supplier for the Goods delivered in accordance with the Agreement up to the date of the termination, and the Purchaser has no other liability to the Supplier in relation to that termination.
- 7.3 When the Purchaser issues a notice under clause 7.1, the Supplier will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of the Agreement.
- 7.4 The Supplier may terminate the Agreement if the Purchaser fails to remedy, to the satisfaction of the Supplier, any breach of this Agreement (which in the reasonable opinion of the Supplier is able to be remedied) within 14 days after the date on which the Supplier issues the Purchaser a written notice requiring the Purchaser to remedy the breach.
- 7.5 Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- 7.6 On termination or expiry the Supplier must immediately cease using all materials that contain any data or Confidential Information by either destroying the materials or returning the materials at no additional cost to the Purchaser.
-

8. WARRANTY AND INDEMNITY

- 8.1 The Supplier warrants to the Purchaser that:
- (a) all Goods supplied pursuant to this Order are of merchantable quality, of good material and workmanship, reasonably fit for their intended purpose, are free from defects and comply with all laws;
 - (b) the provision of the Goods does not infringe any intellectual property right or other right of a third party and that it has obtained all necessary licences, permits or approvals required for the supply of the Goods;
 - (c) the Purchaser will have the full benefit of any manufacturer's warranty, and where the Supplier is not the manufacturer of the Goods, the Supplier assigns the benefit of such warranties to the Purchaser or the Purchaser's nominee;
 - (d) parts of the Goods are and will continue to be available for a period of five years from the date of delivery and that the Supplier will provide at least 12 months' notice of any replacement parts being made obsolete;
 - (e) it has the right to sell the Goods and the Goods are free from any charge or encumbrance. The Supplier guarantees the Goods against patent and/or latent defects for 12 months from acceptance or for the period offered by the manufacturer (if longer).
- 8.2 The Supplier must indemnify the Purchaser and its Personnel (Indemnified Party) against any loss, damage, claim, action or expense (including all legal expense) or compensation arising directly from:

- (a) personal injury, including sickness and death;
- (b) property damage;
- (c) any warranty given by the Supplier under this Agreement being incorrect or misleading in any way;
- (d) fraudulent acts or omissions;
- (e) wilful misconduct or unlawful act or omission;
- (f) third party claim arising out of a breach of the Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or
- (g) infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third party,

which was caused, or contributed to by, any act or omission by the Supplier or any of its Personnel.

- 8.3 The Supplier's liability to indemnify the Indemnified Party under clause 8.2 is reduced to the extent that any wilful, unlawful or negligent act or omission by the Indemnified Party contributed to the loss, damage, claim, action, expense or compensation.

9. HealthShare Victoria

- 9.1 The Supplier acknowledges and agrees that:
- (a) HealthShare Victoria enters into agreements with suppliers for the purpose of delivering best-value health-related goods and services to Victoria's public health care providers; and
 - (b) Latrobe, as a Victorian public health service, at all times seeks to procure best-value goods and services and may enter into agreements with HSV accredited suppliers for that purpose.
- 9.2 The Supplier warrants that as at the date of this Agreement, the Supplier has not entered into a Standing Offer Agreement with HealthShare Victoria for the supply of goods that are the subject of this Agreement.

10. PROPORTIONATE LIABILITY

- 10.1 To the maximum extent permitted by law:
- (a) the Supplier must not seek to apply the provisions of the Proportionate Liability Legislation in relation to any claim or cause of action by the Purchaser against the Supplier arising under this Agreement;
 - (b) if, notwithstanding clause 10.1(a) the provisions of the Proportionate Liability Legislation are applied in relation to any claim or cause of action by the Purchaser against the Supplier arising under this Agreement, the Supplier indemnifies the Purchaser against any loss or damage the Purchaser is not able to recover from the Supplier because of the operation of those provisions,

including as a result of the insolvency or incapacity of a concurrent wrongdoer (as defined under the Proportionate Liability Legislation).

- 10.2 The indemnity in clause 10.1(b) does not apply to concurrent wrongdoers who are not the Supplier's Personnel.
-

11. INSURANCE

- 11.1 Prior to delivering the Goods to the Purchaser the Supplier must effect and maintain public liability and product liability insurances which are necessary to fully indemnify the Purchaser against any liability which the Supplier may incur in relation to this Order. This insurance must be with a reputable insurer and be for an amount, in respect of any one occurrence, not less than \$10 million. Upon request, the Supplier must provide proof that the insurance required by this Order has been effected and maintained.
-

12. CONFLICTING CONDITIONS

- 12.1 If any conditions contained in the Supplier's quotation, acceptance of order or other documentation are contrary to or differ from the conditions specified in this Order, the conditions specified in this Order will prevail unless the conditions in this Order expressly contemplate otherwise. Acceptance of this Order and/or performance of this Order will be deemed to be acceptance of this condition notwithstanding that the acceptance of any documentation of the Supplier may contain a condition similar in terms to this condition.
- 12.2 If the Supplier is unable or unwilling to accept any of the conditions contained in this Order, then this Order must be immediately returned to the Purchaser.
-

13. VARIATION

- 13.1 These terms and conditions will not be subject to modification or alteration unless they are in writing and signed by a duly authorised representative of the Purchaser.
-

14. WAIVER

- 14.1 A waiver by the Purchaser in respect of a breach of this Order by the Supplier shall not be deemed to be a waiver in respect of any other breach and the failure of the Purchaser to enforce at any time a provision of this Order shall in no way be interpreted as a waiver of such provision.
-

15. MAINTENANCE

- 15.1 All obligations in respect of maintenance of Goods supplied and claims made under warranties are owed to, and must be enforceable by the Purchaser.
-

16. COMPLIANCE AND REGULATIONS

- 16.1 The Goods must comply with all relevant statutory requirements, e.g., Therapeutic Goods Administration codes of practice, Australian Council of HealthCare Standards, ISO and Australian Standards.

16.2 The onus rests with the Supplier to provide evidence of compliance.

17. DOCUMENTATION FOR EQUIPMENT

17.1 All Goods comprising equipment must be supplied with two copies of full operating instructions in English together with all necessary instructions for routine maintenance and service so as to ensure safe and effective use of the equipment, including electrical circuits, schematic diagrams and service manuals. If a maintenance or warranty period is to be provided by the Supplier, details must be provided. If the equipment must be commissioned on site by the Supplier to give effect to the warranty, this must be stated. If the equipment being supplied must be installed, the Supplier must provide all necessary details to allow that installation to occur and must specify what part(s) (if any) of the installation is included in the quoted price. All Goods must be supplied with Material Safety Data Sheets (where appropriate).

18. MODERN SLAVERY ACT

18.1 The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods.

18.2 If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Order, the Supplier must as soon as reasonably practicable take action to remove these practices from the operations and supply chains.

18.3 If requested by the Purchaser, with at least twenty (20) Business Days' notice, the Supplier must respond to any reasonable requests for information (including any supplier survey) provided by the Purchaser relating to its compliance under clause 18.1.

18.4 Where either the Supplier or Purchaser has identified:

- (a) significant or persistent Modern Slavery risks; or
- (b) alleged Modern Slavery practice(s),

in the operations and supply chains used in the performance of the Order; and

- (c) the Purchaser has made reasonable efforts to engage the Supplier to take action to mitigate the risks to remove the practice(s); and
- (d) the Supplier fails to take action to mitigate those risks or remove those practice(s),

the Purchaser reserves the right to terminate the Order in accordance with clause 7.1.

19. PRICE

19.1 The Unit Price is stated on this Order and must remain firm. No variation will be accepted, without the prior approval of a duly authorised representative of the Purchaser.

20. GST

- 20.1 Terms used in this clause have the same meaning as those terms in A New Tax System (Goods and Services Tax) Act 1999.
- 20.2 The Purchaser must pay the Supplier any GST payable in respect of the Goods supplied in addition to the stated price.
- 20.3 The Purchaser must pay to the Supplier any amount of GST that the Purchaser is required to pay at the same time and in the same manner as the Purchaser is required to pay the consideration for the supply to which the GST relates.
- 20.4 The Supplier must issue a tax invoice in the format required by the Purchaser and the law to the Purchaser for the supply. The tax invoice must set out the amount of the GST payable by the Purchaser.
- 20.5 The Supplier warrants that it is registered or will be registered for Australian Business Number and for GST purposes at each time a taxable supply is made.
- 20.6 The Supplier indemnifies the Purchaser for any loss it suffers as a result of the Supplier not being registered for GST and/or Australian Business Number purposes. On request by the Purchaser the Supplier must produce evidence that it is so registered.

21. TERMS OF PAYMENT

- 21.1 Subject to compliance by the Supplier with these terms and conditions the Purchaser must pay the price stated on this Order. Payments must be within 30 days following the end of month.
- 21.2 If the Purchaser is not satisfied that the Goods have been provided in accordance with this Order, the Purchaser may, after giving the Supplier notice of the reasons why it is not satisfied, refuse to pay that part of the invoice until the Goods have been provided to its satisfaction.

22. CONFIDENTIALITY

- 22.1 The Supplier must not, and must ensure that its employees, agents and contractors do not, disclose to any person, without the prior approval of the Purchaser:
- (a) the contents of this Order; or
 - (b) any information acquired by the Supplier, its staff or its contractors concerning any patients receiving services at the Purchaser; or
 - (c) any information regarding the Purchaser, its systems, procedures, staff or activities; except as required by law.
- 22.2 The Supplier must ensure that its employees, agents and any contractors engaged by it comply with
- (a) section 141 of the *Health Services Act 1988 (Vic)* which relates to the unlawful disclosure of patient information; and

- (b) all Victorian privacy, health records or similar legislation which the Purchaser must comply with.
- 22.3 The Contractor must promptly notify the Purchaser if it becomes aware of a “Suspected Eligible Data Breach” or an “Eligible Data Breach” (as those terms are defined in the *Privacy Act 1988* (Cth)), and to the extent permitted by law, cooperate with the Purchaser and its personnel (including the Purchaser’s insurer) in the assessment of any data breach, identifying appropriate remedial action, and if applicable, any notification procedures.
- 22.4 The Supplier must ensure that its sub-contractors agree to abide by the provisions of this clause.
- 22.5 The obligations imposed by this clause will survive the expiry or termination of this Order.
-

23. ASSIGNMENT

- 23.1 The Supplier may only assign or sub-contract any of its rights or obligations under this Order with the Purchaser’s prior written consent.
-

24. RELATIONSHIP

- 24.1 This Order does not create an employment, partnership or agency relationship between the Supplier and the Purchaser. The Supplier does not, and must not represent itself to have, any authority to bind the Purchaser.
-

25. SEVERABILITY OF TERMS

- 25.1 Any term of the Order which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of the Order is not affected.
-

26. GOVERNING LAW

- 26.1 These terms and conditions shall be governed by and construed in accordance with the laws of the State of Victoria and any proceeding shall be heard at a location in Victoria deemed appropriate by the Purchaser.
-

27. SUPPLIER CODE OF CONDUCT

- 27.1 The Victorian Government’s Supplier Code of Conduct is available at www.vic.gov.au (search for “Supplier Code of Conduct”).
- 27.2 The Supplier acknowledges that:
- (a) The Supplier Code of Conduct is an important part of the State’s approach to procurement and describes the State’s minimum expectations regarding the conduct of its suppliers;
 - (b) The Supplier has read and will comply with the Supplier Code of Conduct; and

- (c) The expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the supplier, whether under this Agreement or at Law.

28. INTERPRETATION

28.1 In these conditions, unless the context otherwise requires:

- (a) **Agreement** means the agreement for the supply of the Goods consisting of these General conditions for the supply of Goods and the Purchase Order.
- (b) **Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in Victoria.
- (c) **Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, the Purchaser, including any information designated by the Purchaser as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information which:
- (i) is in or which subsequently enters the public domain, other than as a result of a breach of an obligation of confidentiality;
 - (ii) the Supplier can demonstrate was in its possession prior to the date of the Agreement;
 - (iii) the Supplier can demonstrate was developed by it independently of any disclosures previously made by the Purchaser;
 - (iv) is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with the Purchaser or otherwise prohibited from disclosing the information to the Supplier; or
 - (v) is required to be disclosed pursuant to Law, court order or other legal process.
- (d) **Goods** means the goods or Therapeutic Goods, and may include associated training, education and case support, specified in the Purchase Order and as provided under this Agreement.
- (e) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)
- (f) **Modern Slavery** has the same meaning as it has in the *Modern Slavery Act 2018* (Cth)
- (g) **Health Services Personnel** includes the officers, employees, agents, contractors and sub-contractors of Health Services.
- (h) **Order** means the agreement between the Supplier and the Purchaser, which includes these terms and conditions.
- (i) **Intellectual Property Rights** means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered

trademarks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

- (j) **Patient** means any person treated or attended to, in any way, by Health Services.
- (k) **Personnel** of a party includes the officers, employees, agents, contractors and sub-contractors of that party.
- (l) **Purchase Order** means any form of order or acceptance from the Purchaser for the supply of the Goods which incorporates these terms and conditions.
- (m) **Purchaser** means Latrobe Regional Health (ABN 18 128 843 652).
- (n) **Supplier** means the entity supplying the Goods in the Order.
- (o) **Therapeutic Goods** has the same meaning as in the *Therapeutic Goods Act 1989* (Cth)
- (p) **Unit Price** means the price per item of each of the Goods, as specified in the Purchase Order.