

1. Application of these terms and conditions

- 1.1. These terms and conditions apply to any purchase order issued by the NSW Health agency (**the Agency**) to the person or organisation identified in the purchase order (**Supplier**) for the supply of goods and/or services (**Goods and/or Services**) by the Supplier, subject to clause 1.2 below.
- 1.2. Where the purchase order is issued under a NSW Government, NSW Health or duly authorised written Agency contract or agreement, the terms and conditions of that contract or agreement apply to the supply of those Goods and/or Services and these terms and conditions will not apply.
- 1.3. The following additional documents may be issued in relation to the purchase order:
 - (a) documents incorporated by reference in or issued by the Agency under the purchase order (including specifications and work orders), so long as the details have been provided to the Supplier;
 - (b) Supplier documents, including Supplier quotes and terms and conditions, to the extent that it is accepted under the purchase order and that they grant rights or benefits to the Agency or impose obligations on the Supplier; and
 - (c) any variation expressly agreed in writing by duly authorised representatives of the parties.

2. Acceptance of terms of supply

- 2.1. The Supplier is taken to accept the purchase order on the terms set out in this clause 2 upon the earlier of it notifying the Agency that it accepts the purchase order or supplying or part supplying the Goods and/or Services to the Agency following the issue of the purchase order.
- 2.2. Subject to clause 1.2 above, when the Supplier accepts a purchase order, a binding agreement is formed between the parties for the supply of the Goods and/or Services stated in the purchase order and the terms of that agreement are made up of the purchase order, these terms and conditions and the documents listed in clause 1.3 above (**Agreement**).
- 2.3. To the extent permitted by law, all other terms and conditions in respect of the Goods and/or Services are excluded from and will not be incorporated into the Agreement.
- 2.4. If there is any ambiguity or inconsistency between the documents constituting the Agreement, the order of priority of these documents will reflect the order of priority in which the documents are listed in this clause and then clause 1.3 above.

3. Agency policies and procedures

The Supplier must perform its obligations under the Agreement in compliance with the Agency policies and procedures that apply to the supply of the Goods and/or Services, as reasonably notified by the Agency to the Supplier from time to time. Without limitation, this includes:

- (a) **access and safety:** when entering the premises of the Agency, the Supplier must use reasonable endeavours to protect people and property, prevent nuisance and act in a safe and lawful manner;
- (b) **hazards or safety incidents:** advising the Agency immediately of any hazard or safety incidents arising out of the supply of the Goods and/or Services and providing the Agency with any assistance as

reasonably requested in relation to the hazard or safety incidents;

- (c) **privacy:** complying with (i) Information Protection Principles and Health Privacy Principles contained in the Privacy and Personal Information Protection Act 1998 (NSW) and the Health Records and Information Privacy Act 2002 (NSW) respectively to the extent that these principles apply as if the Supplier is an agency as defined in these Acts and (ii) any reasonable demands of the Agency relating to this;
- (d) **record keeping:** maintaining proper business and accounting records relating to the supply of the Goods and/or Services and allowing the Agency or its authorised representatives to inspect those records when requested for verification of compliance with the Agreement;
- (e) **conflict of interest:** notifying the Agency immediately if the Supplier or its employees, agents and contractors hold any office or possess any property, are engaged in any business or activity or have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with obligations under the Agreement; and
- (f) **special checks:** conducting any special checks that must be obtained for Supplier personnel and subcontractors (such as a working with children check).

4. Supply and delivery

- 4.1. The Supplier must, and must ensure that its personnel, contractors and subcontractors, supply the Goods and/or Services in accordance with the Agreement and the reasonable directions of the Agency.
- 4.2. The Supplier must ensure that all Goods are suitably packed (for transit and storage), clearly marked and delivered at the delivery destination stated in the Agreement or otherwise in accordance with the reasonable instructions given by the Agency.
- 4.3. All Goods delivered must be accompanied by a delivery docket detailing the purchase order number and description and quantity and necessary documentation.
- 4.4. Unless otherwise stated, time is of the essence with respect to the Supplier's delivery and performance obligations under the Agreement.
- 4.5. The Supplier acknowledges that the Goods and/or Services, or any goods and/or services of a similar kind, are not supplied to the Agency on an exclusive basis.

5. Inspection, testing and acceptance

- 5.1. The Agency may inspect or conduct testing of the Goods and/or Services within 30 days of delivery or supply to satisfy itself that they are in accordance with the Agreement.
- 5.2. The Agency may monitor the performance and outcomes of the Services and the Supplier must provide the Agency with information and assistance reasonably required by the Agency to carry out such monitoring.
- 5.3. If, after or during inspection, testing or monitoring, the Agency is not satisfied that any Goods and/or Services comply strictly with the Agreement, the Agency may reject the Goods and/or Services. Once rejected, the Agency may at the option of the Agency:
 - (a) require the Supplier to repair or resupply (without cost) the relevant Goods and/or Services in accordance with the Agreement; or

- (b) reject the Goods and/or Services (and any other Goods and/or Services it was intended to be used with), terminate the Agreement in whole or part and require the refund of any part of the price paid by the Agency for the rejected Goods and/or Services.
- 5.4. The Supplier is liable for all loss, liability, costs and expense incurred by the Agency as a result of the rejection of the Goods and/or Services.
- 5.5. Any inspection, testing, notification or acceptance by the Agency does not constitute a waiver or limitation of any rights by the Agency if the Goods and/or Services are later found not to comply with the Agreement.

6. Ownership and risk

Ownership or title in the Goods will pass to the Agency on delivery to the location destination in accordance with the Agreement. If the Goods are retaken by the Supplier, then the risk of loss or damage passes back to the Supplier on removal from the Agency's premises.

7. Price and payment

- 7.1. Price for the Goods and/or Services set out in the purchase order is fixed and includes all costs and charges, including for taxes, labelling, packing, delivery, freight and unloading, unless otherwise stated in the Agreement.
- 7.2. The Supplier must invoice the Agency within 30 days after delivery of the Goods or on completion of all Services, unless otherwise stated.
- 7.3. The Agency must pay the Supplier for the Goods and/or Services by the end of the month following the month in which a Correctly Rendered Invoice or Statement is received, subject to clause 7.6 below.
- 7.4. If the Agency disputes an invoice, then the Agency does not need to pay the Supplier the disputed amount until the dispute is resolved, but will pay all undisputed amounts by the due date.
- 7.5. Payment is not to be taken as evidence that the Goods and/or Services have been supplied under the Agreement, but must be taken as payment on account only.
- 7.6. Where the Supplier is a Small Business and registered as such with NSW Health, the Agency will make payment to the Supplier within 30 days from the date of receipt of a Correctly Rendered Invoice or Statement.
- 7.7. **Correctly Rendered Invoice or Statement** and **Small Business** have the same meaning as in NSW Treasury Circular 11/12 "Payment of Accounts" as amended from time to time.

8. Intellectual Property

- 8.1. All Intellectual Property Rights of the parties existing before the date of the Agreement will be retained by the relevant party.
- 8.2. The Supplier grants, and must procure the grant to the Agency a, perpetual, royalty-free, non-exclusive, irrevocable licence:
- (a) to use any Intellectual Property Rights to the extent necessary to receive the full use and benefit of the Goods and/or Services; and
 - (b) to sub-licence this to any person.
- 8.3. **Intellectual Property Rights** means all registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other proprietary rights anywhere in the world whether created before or after the commencement of the Agreement.

9. Confidential information

- 9.1. Each party must keep confidential, and not disclose, any information of the other party concerning or arising from the Agreement which by its nature is confidential or is designated by a party as confidential, except:
- (a) where the confidential information is lawfully obtained from a third party, is public knowledge or is already known or independently developed;
 - (b) where the disclosing party has the prior written permission of the other party;
 - (c) to the disclosing party's personnel, agents, contractors, subcontractors, professional advisors and related bodies corporate who need to know the information for the purposes of the Agreement, provided such persons are directed to keep the confidential information confidential and for the purpose of which it was disclosed; or
 - (d) where compelled to do so by law, provided the disclosing party gives the other party prior written notice.
- 9.2. Each party must use the confidential information of the other party for the purposes for which it was disclosed in connection with the Agreement.
- 9.3. The Agency may disclose the confidential information to any Minister, NSW Government or NSW Health agency for a legitimate government or Agency purpose.

10. Warranties

- 10.1. In relation to Goods, the Supplier represents and warrants that the Goods:
- (a) conform with their specifications and meet the requirements of the Agreement;
 - (b) are newly manufactured, free from material defects (including defects in any installation or commissioning work required) and fit for purpose;
 - (c) will be free from any charge or liability;
 - (d) if they include software, will be free from any code or software that will damage or infect any products, services or programs or permit unauthorised access to or disabling of software or data; and
 - (e) will include the full benefit of any applicable warranties and guarantees given by the Supplier or third parties (which the Supplier must pursue on the Agency's behalf if requested).
- 10.2. In relation to Services, the Supplier represents and warrants that:
- (a) the Supplier and all its personnel and subcontractors engaged to supply services are appropriately qualified, competent and experienced and hold all necessary licenses, permits and authorities; and
 - (b) the Services will be performed with due care and skill and in accordance with best industry practice.
- 10.3. The Supplier also warrants, and it is a condition of the Agreement, that the supply of any Goods and/or Services, and the use of those Goods and/or Services:
- (a) complies with all law, codes and any applicable Australian (or equivalent) standards, including standards laid down by any standards association; and
 - (b) do not infringe any Intellectual Property Rights and it has the necessary rights to grant the licences as provided in clause 8.2.

- 10.4. The Supplier acknowledges and agrees that the Agency will rely (and will continue to rely) on the Supplier, as the Supplier of the Goods and/or Services, to know all applicable laws, codes and Australian (or equivalent) standards and best industry practice.
- 10.5. The Goods and/or Services must be supplied with a minimum of 12 months warranty from the date of delivery or the completion of the project to which the Goods and/or Services relate, whichever is later.
- 10.6. During any applicable warranty period, the Supplier must, without charge and without prejudice to any other rights or remedies of the Agency, repair, collect and replace or resupply any Goods and/or Services that do not comply with any applicable warranties.

11. Subcontracting

- 11.1. The Supplier is permitted to subcontract the whole or part of its obligations under the Agreement to any person that is qualified to perform those obligations (**subcontractor**). However, the Supplier is responsible for any acts and omissions of any subcontractor as if they were the Supplier's acts and omissions.
- 11.2. The Supplier must make available to the Agency the details of all subcontractors engaged to provide the Goods and/or Services under the Agreement.
- 11.3. The Supplier must ensure that any subcontract entered into for the purpose of fulfilling its obligations under the Agreement imposes on the subcontractor the same obligations that the Supplier has under the Agreement, including the requirements in relation to subcontracts.

12. Indemnity

The Supplier must indemnify and keep indemnified the Agency and its officers, employees, agents and contractors ("**those indemnified**") against any loss, damage, liability, costs or expense (including legal expense) arising out of or in connection with:

- (a) any breach of the Agreement by the Supplier, or its personnel, agents, contractors or subcontractors;
- (b) any breach of warranty or representation given by the Supplier under the Agreement; and
- (c) any negligent or unlawful act or omission of the Supplier or its personnel, agents, contractors or subcontractors in connection with the Agreement,

except to the extent that any act or omission by those indemnified caused or contributed to the loss, damage, liability, cost or expense.

13. Insurance

The Supplier must, for so long as any obligations remain in connection with the Agreement, effect and maintain appropriate insurance policies against any risk or liability arising out of or in connection with the supply of the Goods and/or Services, including workers compensation and public liability insurance and (if applicable) product liability and professional indemnity insurance. Upon the Agency's request, the Supplier will provide proof of insurance acceptable to the Agency.

14. Termination

- 14.1. **Withdrawal of purchase order:** the Agency may cancel a purchase order at any time, but not if at that time the Supplier has committed substantive resources to fulfil the purchase order or has acquired or irrevocably committed to acquire substantive inputs from a third party to fulfil the purchase order.
- 14.2. **Termination for convenience:** either party may terminate the Agreement in whole or part for any reason at any time by providing 10 business days' notice to the other party.

- 14.3. **Termination for cause:** either party may terminate the Agreement in whole or part with immediate effect if the other party:
- (a) breaches a material provision of the Agreement and the breach is incapable of remedy;
 - (b) breaches a material provision of the Agreement and fails to remedy it within 5 days of receiving a notice detailing the breach and requesting that it be rectified;
 - (c) has a change in control or management which the other party reasonably considers may result in harm to its property, goodwill or reputation; or
- (a) becomes, or is subject to proceedings which may result in the Supplier becoming, insolvent or bankrupt or enters into an arrangement with creditors or any form of external administration.

14.4. Effect of termination:

- (a) the Agency will pay the Supplier for Goods and/or Services accepted in accordance with the Agreement;
- (b) if a party terminates for convenience under clause 14.2 above, that party must pay for any reasonable costs that the other party incurs that are directly attributable to the termination or reduction, provided that the party substantiates these costs to the satisfaction of the terminating party;
- (c) where the Agency has made payment in advance to the Supplier for Goods and/or Services not yet delivered or supplied to the Agency, the total of that payment must be repaid by the Supplier to the Agency within 14 days of termination and, if not repaid, is recoverable by the Agency from the Supplier as a debt.

14.5. Under no circumstances will:

- (a) the Supplier be entitled to payments that exceed the price stated in the Agreement or payment for any part of the Agreement not performed; or
- (b) a party be liable for or entitled to loss of profit or anticipated profit under the Agreement.

14.6. Any termination of the Agreement will not affect any accrued rights or remedies of either party.

14.7. Survival:

once the Goods and/or Services have been supplied and paid for, the Agreement is at an end but if there is a claim about infringement of Intellectual Property Rights, warranties, payment of invoices or an issue with confidential information or personal information then these matters will be dealt with as though the Agreement was not at an end.

15. General

- 15.1. **Variation:** any variation to these terms and conditions will be binding on the Agency only if expressly agreed as a variation in writing by a duly authorised representative of the Agency.
- 15.2. **Assignment:** the Supplier must not assign any rights under the Agreement without the Agency's prior written consent.
- 15.3. **Waiver:** a party's failure or delay to exercise a right under the Agreement does not operate to prejudice those rights.
- 15.4. **Entire Agreement:** the Agreement constitutes the entire agreement between Agency and the Supplier with respect to the supply of the Goods and/or Services.
- 15.5. **Governing law and jurisdiction:** the laws of NSW apply to the Agreement and the parties submit to the exclusive jurisdiction of this State.