

STANDARD TERMS OF TRADE

1. APPLICATION OF TERMS AND CONDITIONS AND ATTACHED AGREEMENT DETAILS

These standard terms of trade are to be read in conjunction with all Purchase Orders and Supply Agreements or Contracts for Goods and/or Services supplied to NCN Health. Together, the Agreement/Order or Contract and these standard terms of trade are called "this Agreement". All references to 'the Health Service' and the 'Supplier' are references to the respective entities described in the Agreement Details. References to goods include services.

2. TITLE AND RISK

Title to and the risk in any goods ordered pursuant to this Agreement will pass to the Health Service after physical delivery is taken by the Health Service and the goods have been inspected and accepted by the Health Service.

3. INSPECTION AND REJECTION

Goods delivered in accordance with this Agreement are only accepted when they have been inspected by an authorised representative of the Health Service. The Health Service may reject any goods, even after they have been accepted, if they are defective or are not in accordance with the Health Service's specifications. Any payment made for goods prior to inspection will not constitute acceptance and the Supplier must refund to the Health Service any payment made in respect of goods (including transportation costs) immediately on receipt of advice of rejection. 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 then Health Service may do so, at the Supplier's cost.

4. DELIVERY

- (i) Deliveries must be made as specified in this Agreement and the Health Service will not be required to accept or pay for quantities in excess of that ordered by the Health Service.
- (ii) The Health Service accepts no responsibility for any goods delivered to locations or at times other than those specified in this Agreement.
- (iii) 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).
- (iv) All goods delivered must be accompanied by a delivery docket detailing the official Purchase Order number, the description and quantity of goods, and any other information required by the Health Service upon the order.
- (v) Deliveries will be, unless otherwise directed, to the campus which provided the purchase order.

5. DRAWINGS ETC

All drawings, specifications and data provided to the Supplier will continue to be owned by the Health Service and must not be disclosed or used except as required by this Agreement. Upon the completion or other termination of this Agreement the Supplier must return all such drawings, specifications and data together with any copies and must not make any further use (either directly or indirectly) of any information from those items without the Health Service's prior written consent. In particular, all art work together with blocks and/or plates which have been prepared in connection with the supply of stationery and/or printed matter are the property of the Health Service and must be delivered to the Health Service, at the time specified by the Health Service.

6. CANCELLATION

The Health Service may cancel this Agreement or any undelivered part of this Agreement if the Supplier does not make deliveries strictly in accordance with the delivery schedule or commits any breach of the terms of this Agreement, becomes insolvent or commits an act of bankruptcy or has a liquidator, receiver or official manager appointed to it or if the Supplier ceases or indicates that it is about to cease carrying on business. This right of cancellation is in addition to any other remedies which the Health Service may have in law or equity.

7. LIABILITY

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- (i) The Supplier warrants to the Health Service that all goods and services supplied pursuant to this Agreement are of merchantable quality, of good material and workmanship, reasonably fit for its intended purpose and are free from defects. The Supplier also warrants that it has a right to sell the goods and the goods are free from any charge or encumbrance. The Supplier guarantees the goods and services against faulty workmanship and materials for 12 months from acceptance or for the period offered by the manufacturer (if longer).
- (ii) The Supplier must continually indemnify the Health Service, its employees, officers and contractors against any claims or proceedings that are made or commenced and against any liability, loss (including consequential loss), damage or expense (including legal costs on a full indemnity basis) that is incurred or suffered as a direct or indirect result of the supply of the goods, a breach of this Agreement by the Supplier and/or anything done by the Supplier, or an agent or employee of the Supplier upon the premises of the Health Service in relation to this Agreement. This indemnity is in addition to any other remedies which the Health Service may have at law or in equity. This indemnity continues after this Agreement expires or is cancelled.

8. INSURANCE

Prior to delivering the goods and/or services to the Health Service the Supplier must effect and maintain all insurances which are necessary to fully indemnify the Health Service against any liability which the Supplier may incur under this Agreement. This insurance must be with a reputable insurer and be for an amount, in respect of any one occurrence, not less than \$20 million. Upon request, the Supplier must provide proof that the insurance required by this Agreement has been effected and maintained.

9. CONFLICTING CONDITIONS

- (i) If any conditions contained in the Supplier's quotation, acceptance of this Agreement or other documentation (other than the attached Agreement Details) are contrary to or differ from the conditions specified in this Agreement, the conditions specified in this Agreement will prevail unless the conditions in this Agreement expressly contemplate otherwise. Acceptance of this Agreement and/or performance of this Agreement 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.
- (ii) If the Supplier is unable or unwilling to accept any of the conditions contained in this Agreement, then this Agreement must be immediately returned to the Health Service.
- (iii) The attached Agreement Details prevail over these standard terms of trade to the extent of any inconsistency.

10. VARIATION

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 Health Service.

11. MAINTENANCE

All obligations in respect of maintenance of goods supplied and claims made under warranties are owed to, and must be enforceable by the Health Service.

12. COMPLIANCE AND REGULATIONS

The goods must comply with all relevant statutory requirements, codes of practice and Australian Standards. The onus rests with the Supplier to provide evidence of compliance.

13. DOCUMENTATION

- (i) All equipment must be supplied with 2 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.
- (ii) 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 Suppliers to give effect to the warranty, this must be stated.
- (iii) 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.
- (iv) All goods must be supplied with data safety sheets (where appropriate).

14. PRICE

The price of the goods supplied under this Agreement is as stated on the attached Agreement Details and must remain firm. No variation will be accepted, without the prior approval of a duly authorised representative of the Health Service.

15. GST

Terms used in this clause have the same meaning as those terms in *A New Tax System (Goods and Services Tax) Act 1999*.

- (i) The Health Service must pay the Supplier any GST payable in respect of the goods supplied in addition to the price stated on the attached Agreement Details.
- (ii) The Health Service must pay to the Supplier any amount of GST that the Health Service is required to pay at the same time and in the same manner as the Health Service is required to pay the consideration for the supply to which the GST relates.
- (iii) The Supplier must issue a tax invoice in the format required by the Health Service and the law to the Health Service for the supply. The tax invoice must set out the amount of the GST payable by the Health Service.
- (iv) 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.
- (v) The Supplier indemnifies the Health Service 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 Health Service the Supplier must produce evidence that it is so registered.

16. TERMS OF PAYMENT

The Health Service must pay the price stated on the Agreement Details for goods delivered in accordance with this Agreement. Payments must be within 60 days following receipt of a valid invoice. Invoices are to be sent to the individual/Department described in the Agreement Details.

17. CONFIDENTIALITY

- (i) 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 Health Service:
 - (a) the contents of any Agreements, purchase orders, pricing other contract details; or
 - (b) any information acquired by the Supplier, its staff or its contractors concerning any patients receiving services at the Health Service; or
 - (c) any information regarding the Health Service, its systems, procedures, staff or activities; except as required by law.
- (ii) The Supplier must ensure that its employees, agents and any contractors engaged by it comply with all Commonwealth, Territory and State privacy, health records or similar legislation with the Health Service must comply with.
- (iii) The Supplier must ensure that its sub-contractors agree to abide by the provisions of this clause.
- (iv) The obligations imposed by this clause will survive the expiry or cancellation of this Agreement.

18. ASSIGNMENT

The Supplier may only assign any of its rights under this Agreement with the Health Service's prior written consent.

19. Supplier Code of Conduct

- (a) The Victorian State Government's Supplier Code of Conduct is available at the Victorian Government Purchasing Board website: <http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct> Updates and amendments to the Code will also be made available at this website
- (b) The Contractor acknowledges that:
 - (i) 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;
 - (ii) the Contractor has read and aspires to comply with the Supplier Code of Conduct; and
 - (iii) 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'.

20. GOVERNING LAW

These terms and conditions are governed by and construed in accordance with the laws of Victoria and any proceeding must be heard in Melbourne, Victoria.

CURRENT AS AT 1st July 2019 (NCN Health_Termsotrade.doc)