

STANDARD TERMS OF TRADE

1. Application of terms and conditions

- a. The Supplier acknowledges and agrees that:
 - i. the Purchaser enters into this agreement on its own behalf and on behalf of public hospitals and other health and related services (Health Services) in accordance with sections 131 and 132 of the Health Services Act 1988 (Vic); and
 - ii. Goods will be used by Health Services in the care and treatment of patients and other users of Health Services;
 - iii. the Supplier's liability in relation to the Goods is not limited to those arising from this Agreement and that the Supplier's liability extends to any claims made by the Health Services or the Patients and other users or both.
- b. In acknowledging clause 1a., the Supplier further acknowledges and agrees that:
 - i. the Purchaser may place a Purchase Order for Goods under this Agreement;
 - ii. that the Goods purchased under this Order will be supplied by the Purchaser to the Health Services;
 - iii. the Supplier's obligations and liabilities relating to and arising from clause 1(b)(ii) will be as if those Goods had been purchased directly by the Health Services under this Agreement.
- c. 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 Purchase Order and any specifications recorded in or referred to in the Purchase Order) represent the entire agreement between the Purchaser and the Supplier.

2. Title and Risk in Goods

Risk in any Goods ordered passes to the Purchaser after delivery. Title will pass to the Purchaser at the earlier of acceptance by the Purchaser or upon payment.

3. Delivery of Goods

- a. The Supplier must supply the Goods to the Purchaser in accordance with this Agreement and any reasonable directions given by the Purchaser.

- b. The Supplier must deliver the Goods to the location and time as set out in the Purchase Order. Acceptance of the Goods by the Purchaser will not be taken to have occurred until either:
 - i. acceptance is acknowledged in writing by the Purchaser; or
 - ii. acceptance is deemed to have occurred in accordance with clause 4(a) below.
- c. All Goods supplied 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.

4. Inspection and Rejection of Goods

- a. If the Goods conform with this Agreement, the Purchaser will promptly issue written notification of acceptance of the Goods. If the Purchaser does not give written notification of acceptance or rejection of the Goods within 10 business days of delivery, acceptance of the Goods will be deemed to have occurred on the date of delivery.
- b. If the Goods:
 - i. do not conform with this Agreement; or
 - ii. on delivery are damaged, unfit for purpose or not of merchantable quality, the Purchaser may reject the Goods by giving written notice (including reasons for rejection) to the Supplier within 30 days of delivery. The Purchaser is not obliged to pay for any rejected Goods.
- c. The Supplier must, at its cost, collect and remove any rejected Goods as soon as practicable following notification. If the Supplier fails to collect and remove the rejected Goods within a reasonable time but not more than 7 days after notification in accordance with clause 4(b), the Purchaser may return the Goods to the Supplier at the Supplier's expense, or, following further notification, destroy the Goods or otherwise dispose of the Goods in its absolute discretion.

5. Termination

- a. 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:
 - i. fails to provide the Goods in accordance with the Agreement;
 - ii. 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);

- iii. breaches any provision of the Agreement that is not capable of remedy;
 - iv. or any of its Personnel involved in the supply of the Goods commits fraud, dishonesty or any other serious misconduct;
 - v. commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State; or
 - vi. suffers from an Insolvency Event.
- b. If the Agreement is terminated pursuant to clause 5(a), the Purchaser will pay the Supplier:
- i. for the Goods delivered in accordance with the Agreement up to the date of the termination; and
 - ii. the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit, and the Purchaser has no other liability to the Supplier in relation to that termination.
- c. When the Purchaser issues a notice under clause 5(a), 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.
- d. 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.
- e. 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.
- f. On termination or expiry the Supplier must immediately, following instructions by the Purchaser, 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.

6. Warranties and Liability

- a. The Supplier warrants to the Purchaser that all Goods are of merchantable quality, of good material and workmanship, reasonably fit for their intended purpose and use as set out in the Australian Therapeutic Goods Administration certificate and are free from defects. The Supplier warrants that 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. The Supplier warrants that 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. The Supplier warrants that replacement 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. The Supplier also warrants that 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).

- b. The Supplier must indemnify the Purchaser and each of its Personnel and the Health Services and their officers, employees and agents (Indemnified Party) against any loss, damage, claim, action or expense (including all legal expense) or compensation arising directly from:
 - i. personal injury, including sickness and death;
 - ii. property damage;
 - iii. any warranty given by the Supplier under this Agreement being incorrect
 - iv. fraudulent acts or omissions;
 - v. wilful misconduct or unlawful act or omission;
 - vi. 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
 - vii. 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.
- c. The Supplier's liability to indemnify the Indemnified Party under clause 6(b) 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.

7. Proportionate Liability

- a. To the maximum extent permitted by law:
 - i. 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 or a Health Service against the Supplier arising under this Agreement;
 - ii. if, notwithstanding clause 7(a)(i) the provisions of the Proportionate Liability Legislation are applied in relation to any claim or cause of action by the Purchaser or Health Service against the Supplier arising under this Agreement, the Supplier indemnifies the Purchaser or Health Service against any loss or damage the Purchaser or Health

Service 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).

- b. The indemnity in clause 7(a)(ii) does not apply to concurrent wrongdoers who are not the Supplier's Personnel.

8. Insurance

- a. The Supplier must obtain and maintain insurance cover, at the time of delivery of the goods and, if requested by the Purchaser, for a period of up to 7 years after the goods are delivered, sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with the Agreement, including product liability insurance to the value specified in the Purchase Order or, if no value is specified, to the value sufficient to cover any loss or costs that may be incurred, and, if applicable, public liability insurance. Product liability insurance must be maintained for the longer of any warranty period and three years from acceptance of the Goods.
- b. On request, the Supplier must, within 10 Business Days, provide the Purchaser with evidence of the currency of any insurance it is required to obtain.

9. Conflicting Conditions

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

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 Purchaser.

11. Waiver

A waiver by the Purchaser in respect of a breach of this document 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 document shall in no way be interpreted as a waiver of such provision.

12. Maintenance

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

13. Compliance and Regulations

- a. The Goods must comply with all relevant statutory requirements, e.g., Therapeutic Goods Administration codes of practice, Australian Council of Healthcare Standards, ISO 9000 and Australian Standards. The onus rests with the Supplier to provide evidence of compliance.
- b. The Supplier must act consistently with the Victorian Government's Supplier Code of Conduct.

14. Modern Slavery Act

- a. 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.
- b. 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.
- c. 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 14(a).
- d. Where:
 - i. Either the Supplier or Purchaser has identified:
 1. Significant or persistent Modern Slavery risks; or
 2. Alleged Modern Slavery practice(s) in the operations and supply chains used in the performance of the Order; and
 - ii. The Purchaser has made reasonable efforts to engage the Supplier to take action to mitigate the risks to remove the practice(s); and
 - iii. 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 5(a).

15. Audit

The Purchaser will have the right, after giving no less than 5 Business Days' written notice at any time during business hours, to inspect and/or audit the accounts and records of the Supplier relating to the supply of Goods, including, but not limited to matters relevant to the Order, including compliance with the Supplier Code of

Conduct and specifications. The Purchaser will be entitled to take copies of or extracts from any such records.

16. Access

- a. When entering the premises of the Purchaser, the Supplier must (and must ensure that its Personnel) use reasonable endeavours to protect people and property, prevent nuisance and act in a safe and lawful manner and comply with the safety standards and policies of the Purchaser (as notified to the Supplier).
- b. The Supplier acknowledges that if it (or any of its Personnel) enters the Purchaser's premises, it does so at the Supplier's own risk.

17. Documentation

- a. All 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.
- b. 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.
- c. 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.
- d. All Goods must be supplied with Material Safety Data Sheets (where appropriate).

18. Price

- a. The Unit Price is fixed and inclusive of all taxes (excluding GST), for the duration of the Agreement.
- b. The Supplier may not charge the Purchaser any additional fee or amount for packaging, transport, insurance, loading, unloading, storage or any other costs incurred by the Supplier in supplying or delivering the Goods to the Purchaser

19. GST

Unless otherwise expressly stated, the Price and any other sums payable or consideration to be provided under or in accordance with the Purchase Order or these terms and conditions are exclusive of GST (as defined under the GST Act).

20. Terms of Payment

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 receipt of a correctly rendered and itemised invoice. 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.

21. Confidentiality, Privacy and Data Protection

- a. The Supplier must not, and must ensure that its employees, agents and contractors do not, disclose to any person any Confidential Information, without the prior approval of the Purchaser.
- b. The Supplier must ensure that its employees, agents and any contractors engaged by it comply with privacy, health records or similar legislation which the Purchaser must comply with. The Supplier must not do anything, or fail to do anything, which would cause the Purchaser to be in breach of its own privacy and confidentiality obligations.
- c. The Supplier consents to the Purchaser providing any information which the Purchaser has obtained from the Supplier pursuant to the Order to third parties for the purposes of benchmarking, monitoring, comparison or evaluation of contracts of this type or the purchase of the Goods, with the Purchaser taking reasonable steps (in its opinion) to keep such information confidential.
- d. The Supplier must not, without the consent of the Purchaser, advertise or publish the fact that the Supplier is supplying Goods under this Order.
- e. The Supplier acknowledges that the Purchaser may be required to disclose information under the Freedom of Information Act 1982 (Vic) or in accordance with a request made by the Parliament, the Minister for Health, the Governor, Cabinet, a Parliamentary committee or integrity body. The Supplier will provide all reasonable assistance to the Purchaser in responding to such a request.
- f. The obligations imposed by this clause will survive the expiry or termination of this Order.

22. Intellectual Property

The Supplier irrevocably and unconditionally grants to the Purchaser a non exclusive, perpetual, royalty free, worldwide and transferable licence (including the right to sub-license) 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.

23. Recalls

- a. The Supplier must manage all recalls of Therapeutic Goods in accordance with the requirements of the Uniform Recall Procedure for Therapeutic Goods (URPTG) (as amended from time to time).

- b. All communications, including recall notices, required under clause 23(a) must be sent to the Purchaser and the relevant Health Service.
- c. All recalls and/or hazard alerts must be completed by the Supplier using GS1 Recall or Recall Health (as the case may be).

24. National Product Catalogue

- a. The Supplier must upload and publish all product information and pricing for the Goods on the National Product Catalogue within 3 months of accepting a Purchase Order.
- b. The Supplier must upload and maintain, in a timely fashion, all product data for all Goods to the National Product Catalogue, for the term of this Agreement. In addition, the Supplier must maintain information of the Goods in the GS1 National Location Registry, for the term of the Agreement.

25. Assignment and Sub-Contracting

The Supplier may only assign or sub-contract any of its rights or obligations under this Order with the Purchaser's prior written consent. Further, the Supplier agrees to take all reasonable steps to ensure that its Personnel comply with the obligations set out in this Order.

26. Relationship

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.

27. Severability of Terms

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.

28. Governing Law

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.

29. Interpretation

In these conditions, unless the context otherwise requires:

Agreement means the agreement for the supply of the Goods consisting of these General conditions for the supply of Goods and the Purchase Order.

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:

- a. is in or which subsequently enters the public domain, other than as a result of a breach of an obligation of confidentiality;
- b. the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- c. the Supplier can demonstrate was developed by it independently of any disclosures previously made by the Purchaser;
- d. 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
- e. is required to be disclosed pursuant to Law, court order or other legal process.

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.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth)

Modern Slavery has the same meaning as it has in the Modern Slavery Act 2018 (Cth)

Health Services Personnel includes the officers, employees, agents, contractors and sub-contractors of Health Services.

Order means the agreement between the Supplier and the Purchaser, which includes these terms and conditions.

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.

Patient means any person treated or attended to, in any way, by Health Services.

Personnel of a party includes the officers, employees, agents, contractors and sub-contractors of that party.

Purchase Order means any form of order or acceptance from the Purchaser for the supply of the Goods which incorporates these terms and conditions.

Purchaser means Health Purchasing Victoria (also known as HealthShare Victoria)

Supplier means the entity supplying the goods in the Order.

Therapeutic Goods has the same meaning as in the Therapeutic Goods Act 1989 (Cth)

Unit Price means the price per item of each of the Goods, as specified in the Purchase Order.