

Monash Health (on behalf of the Victorian Department of Health and Human Services, Health Purchasing Victoria and other health services and public hospitals under the *Health Services Act 1988 (Vic)*) (jointly referred to as "Health Services")

Terms and Conditions of Purchase Order

1. Supply of goods

- a) The supplier must supply, and if applicable install, the goods to Health Services in accordance with the Specification and otherwise in accordance with these conditions.
- b) The supplier agrees that the supply of goods is solely governed by these terms and conditions despite any documentation it may provide to Monash Health that purports to govern same.
- c) The supplier must deliver the goods to the delivery point by the time for delivery. Delivery will not be taken to have occurred until delivery is acknowledged in writing by Monash Health or deemed to have occurred in accordance with clause 2(a).
- d) If the specifications require the supplier to install the goods, the goods must be installed by the date specified in the purchase order or such other date as may be agreed by the parties in writing.

2. Acceptance or rejection of goods

- a) If the goods conform with the Specification or sample, Monash Health will promptly accept the goods in writing. If the goods do not conform, Monash Health may reject the goods within 30 days by written notice giving reasons and will not be required to pay for the goods. If Monash Health does not accept or reject the goods within 30 days of delivery, delivery will be deemed to have then occurred.
- b) The supplier must at its cost collect and remove any goods that have been rejected within 5 business days of being notified by Monash Health. If the supplier does not remove the rejected goods within 5 business days, the goods shall be deemed abandoned and Monash Health may in its absolute discretion either remove or dispose of the goods. Any costs incurred by Monash Health in the removal or disposal of the goods shall be a debt due and immediately payable by the supplier to Monash Health.

3. Purchase order cancellation

- a) Monash Health may in its absolute discretion cancel a purchase order by written notice at any time prior to delivery of the goods.
- b) If Monash Health cancels a purchase order, Monash Health's liability to the supplier shall be limited to the costs (if any) reasonably incurred by the supplier up to and including the date of cancellation.

4. Invoicing and payment

- a) The Unit Price is fixed and includes all packaging, transport, insurance, loading, unloading and storage costs and any other costs incurred by the supplier.
- b) The supplier must submit to Monash Health a tax invoice for the purchase price following the supply of the goods which contains the information necessary to be a tax invoice for the purposes of the GST Act together with such other information as Monash Health may reasonably require. The tax invoice must be sent to the address specified in the purchase order.
- c) Monash Health will pay the invoiced amount within 60 days of receipt of an accurate invoice. However, if Monash Health disputes the invoiced amount it must pay the undisputed amount (if any) and notify the supplier of the amount in dispute. The parties will endeavour to resolve any such dispute.
- d) Payment of an invoice is not to be taken as evidence that the goods have been supplied in accordance with the Agreement but must be taken only as payment on account.

5. Title and risk

Title in the goods will pass to Monash Health upon payment for the goods. Risk in the goods will pass to Monash Health after the goods are accepted by Monash Health in accordance with clause 2.

6. Warranties

The supplier warrants to Monash Health that:

- a) (Title) it has the right to sell and transfer title to and property in the goods to Monash Health;
- b) (IP) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the goods;

c) (Conflict) it and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement; and

d) (Goods) the goods:

- i. are new and fit for the purpose stated in the Specification (or, if no purpose is stated, the purpose for which the goods would ordinarily be used);
- ii. conform in all respects with the Specification and to the description, model number and sample (if any) provided by the Supplier;
- iii. are free from defects (including defects in installation); and
- iv. are of merchantable quality and comply with all Laws.

7. Warranty Period

- a) The supplier agrees to provide a warranty on the goods for the warranty period set out in the Specifications.
- b) Notwithstanding clause 7(a), where the goods comprise equipment to be used by Monash Health, the supplier agrees to provide a 12 month warranty on the goods or such longer period as is set out in the Specifications.
- c) Without limiting any obligation of the supplier under this Agreement, the supplier must take all necessary action to obtain for Monash Health the benefit of any standard manufacturer and other relevant third party warranties applicable to the goods.

8. Liability

The supplier must indemnify the Health Services and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense) (**Liability**) which any of them suffers as a direct or indirect result of, or in connection with, the supply of goods, any failure to deliver the goods in accordance with the Agreement or any other breach of the Agreement, except to the extent the Liability is caused or contributed to by the negligent or unlawful act or omission of the Health Services.

9. Documentation

The supplier must provide Monash Health with up to date technical and operator documentation containing sufficient information to enable Monash Health to make full use of the goods.

10. Intellectual Property Rights

The supplier grants to the Health Services a non-exclusive, perpetual, royalty-free transferable licence to use any Intellectual Property Rights in relation to any goods supplied to the extent necessary to allow the Health Services the full use and enjoyment of those goods and the supplier must, upon request by the Health Services, do all things as may be necessary (including executing any documents) to give full effect to such rights.

11. Insurance

- a) The supplier must obtain and maintain insurance cover at all relevant times sufficient to cover any loss or costs that may be incurred and for which the supplier is liable in connection with the supply of the goods, including product liability insurance and, if applicable, public liability insurance. Product liability insurance must match any warranty period or three years after acceptance of the goods, whichever is the greater.
- b) On request, the supplier must provide Monash Health with evidence of the currency of any insurance it is required to obtain.

12. Confidentiality and privacy

- a) The supplier and its employees, agents, directors, partners, shareholders and consultants must not disclose or otherwise make available any Confidential Information to any other person.
- b) The supplier hereby consents to Monash Health publishing or otherwise making available information in relation to the supplier (and the supply of the goods) as may be required:
- i. to comply with the Contracts Publishing System;
 - ii. by the Victorian Auditor-General; or
 - iii. to the Minister or officer of the State, Victorian Parliament, Cabinet or a Parliamentary committee or sub-committee;
 - iv. to comply with the Freedom of Information Act 1982 (Vic).
- c) The supplier must comply with the Privacy Laws in respect of personal or health information (as defined in the Health Records Act 2001 (Vic) held or accessed in connection with this Agreement.

13. Access

When entering the premises of Monash Health, the supplier must 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 Monash Health (as notified to the supplier).

14. Sub-contracting

- a) The supplier must not sub-contract to any third person any of its obligations in relation to the supply of the goods without the prior written consent of Monash Health (which may be given or withheld in its absolute discretion).
- b) The supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the supplier itself.

15. Compliance with Law and Policy

- a) The supplier must, in performing its obligations under these conditions, comply with and ensure the goods comply with all Laws affecting or applicable to the provision of the goods by the supplier under this Agreement including:
- i. the Therapeutic Goods Administration rules and codes of practice;

- ii. Australian Council of Healthcare Standards; and
- iii. Victorian Industry Participation Policy, if applicable.

15A Supplier Code of Conduct

- a) The Victorian State Government's Supplier Code of Conduct is available at the Victorian Government Purchasing Board's website: www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct.
- 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;
 - j. The Contractor has read the Supplier Code of Conduct; and
 - k. The expectations are 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.

16. GST

- a) Terms used in this clause have the same meanings given to them in the GST Act.
- b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.
- c) If GST is imposed on any supply made under or in accordance with these conditions, Monash Health must pay to the supplier an amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the GST amount will be made at the same time as payment for the taxable supply is required to be made.

17. General

- a) The Agreement is governed by and is to be construed in accordance with the Laws. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- b) Time is of the essence in relation to the supply of the goods.
- c) If a purchase order is issued in relation to a separate contract between Monash Health and the supplier, the terms and conditions of the separate contract shall prevail to the extent of inconsistency with the terms and conditions of this Agreement.

18. Interpretation

In these conditions, unless the context otherwise requires:

Agreement means the agreement for the supply of the goods of which these conditions and the purchase order form part.

Conditions mean these general conditions for the supply of goods.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, Monash Health, including any information designated by Monash Health as confidential, which is disclosed, made available, communicated or delivered to the supplier, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of these conditions;
- (b) which the supplier can demonstrate was in its possession prior to the date of the Agreement;
- (c) which the supplier can demonstrate was independently developed by the supplier; or
- (d) which is lawfully obtained by the supplier from another person entitled to disclose such information.

Contracts Publishing System means the policy of the Victorian Government for publication of details of contracts entered into by Victorian Government departments, as amended from time to time.

Delivery point means the location or address to which the goods are to be delivered, as specified in the purchase order.

Goods means the goods (or any of them) specified in the purchase order.

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

Intellectual Property Rights includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including 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.

Laws means: the law in force in Australia and Victoria, including common law, legislation and subordinate legislation; and ordinances, regulations and by-laws of relevant government, semi-government or local authorities.

Privacy Laws means the:

- (e) *Health Services Act 1988* (Vic) and, in particular, section 141 of that Act;
- (f) *Mental Health Act 2014* (Vic) and, in particular, section 346 of that Act;
- (g) *Health Records Act 2001* (Vic) and, in particular, the Health Privacy Principles contained in that Act; and
- (h) *Privacy and Data Protection Act 2014* (Vic) and, in particular, the Information Privacy Principles contained in that Act.

Purchase order means any form of order or acceptance from the Health Services for the supply of the goods which incorporates these conditions.

Purchase price means the sum ascertained by multiplying the Unit Price for the applicable goods by the number of units delivered.

Specification means the specifications to which the goods must comply, as set out in the purchase order or as otherwise incorporated in the Agreement.

State means the Crown in the right of the State of Victoria.

Supplier means the entity supplying the goods under these conditions.

Time for delivery means the date and, where relevant, the time specified in the purchase order (or such other date or time as may be agreed in writing) by or on which delivery of the goods must be effected by the supplier.

Unit price means the price per item of each of the goods, as specified