

Terms and Conditions for the Supply of Goods and/or Services to West Wimmera Health Service

1. APPLICATION OF TERMS AND CONDITIONS

These terms and conditions apply to all goods and/or services supplied to West Wimmera Health Service (WWHS). The Supplier is deemed to have accepted these terms and conditions when the Supplier accepts an order from WWHS to supply goods and/or services to WWHS.

Wherever the word “goods” appears below it means “goods and/or services” where applicable.

2. TITLE AND RISK

Title and any risk relating to any goods ordered pursuant to this document will pass to the Service after the goods have been accepted by the Service.

3. INSPECTION AND REJECTION

Goods delivered in accordance with an authorised WWHS order are only accepted when they have been inspected by an authorised representative of the Service. Acknowledgement of delivery by or on behalf of the Service will not constitute acceptance of the goods for the purposes of these terms and conditions. The Service may reject any goods, even after they have been accepted, if they are defective or are not in accordance with the Service’s specifications or do not meet the purpose for which the Service purchased them. Any payment made for goods prior to inspection will not constitute acceptance and the Supplier must refund to the 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 the Service may do so, at the Supplier’s cost.

4. DELIVERY

Deliveries must be made as specified by the Service and the Service will not be required to accept or pay for quantities in excess of those ordered. The Service accepts no responsibility for any goods delivered to locations or at times other than those it specifies. Deliveries must be made to the Service’s main warehouse, Nhill Hospital, Ryan Lane, Nhill, Victoria or to places otherwise designated during the hours 8.30am-4.00pm, Monday to Friday.

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).

All goods delivered must be accompanied by an invoice detailing the correct purchase order number, and the description and quantity of goods, and any other information required by the Service.

5. DRAWINGS ETC

Physical and intellectual property rights in all drawings, specifications and data provided to the Supplier will continue to be owned by the Service and must not be disclosed or used except as allowed by the Service. Upon the completion or other termination of an order 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 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 Service and must be delivered to the Service, at the time specified by the Service.

6. CANCELLATION

The Service may cancel any order it makes or any undelivered part of any order it makes if the Supplier does not make deliveries strictly in accordance with the required delivery schedule or commits any breach of these terms, becomes insolvent or commits an act of bankruptcy or has a liquidator, administrator, 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 Service may have in law or equity.

7. LIABILITY

The Supplier warrants to the Service that all goods supplied to the Service are of merchantable quality, of good material and workmanship, reasonably fit for their intended purpose and are free from defects. 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).

The Supplier must continually indemnify the 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 or are incurred or suffered by them or any of them as a direct or indirect result of the supply of the goods, a breach of these terms by the Supplier and/or anything done or omitted to be done by the Supplier, or an agent or employee of the Supplier upon the premises of the Service in relation to a Service purchase order. This indemnity is in addition to any other remedies which the Service may have at law or in equity and continues after the relevant Service purchase order expires or is cancelled.

8. INSURANCE

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

9. CONFLICTING CONDITIONS

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 these terms or by the relevant purchase order, the conditions specified in these terms and the order will prevail unless the conditions in these terms and the order expressly contemplate otherwise. Acceptance of a Service purchase order and/or the performance of the relevant purchase 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.

If the Supplier is unable or unwilling to accept any of the conditions contained these terms and the relevant purchase order, then the order must be immediately returned to the Service.

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 Service.

11. WAIVER

A waiver by the Service 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 Service 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 Service.

13. COMPLIANCE AND REGULATIONS

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.

14. DOCUMENTATION

All equipment must be supplied with two copies of full operating instructions (including electrical circuits, schematic diagrams and service manuals) in English together with all necessary instructions for routine maintenance and service so as to ensure safe and effective use of the equipment.

If a maintenance or warranty period is to be provided by the Supplier, details thereof must be provided within one month of acceptance of the relevant order. If the equipment must be commissioned on site by the Suppliers 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 correct installation to occur and must specify what part(s) (if any) of the installation is/are included in the quoted price.

All goods must be supplied with Material Safety Data Sheets (where appropriate).

15. PRICE

The price as stated on the relevant purchase order must remain firm. No variation will be accepted without the prior approval of a duly authorised representative of the Service. All prices quoted are inclusive of freight, insurance and shipping to the designated delivery point.

16. GOODS AND SERVICES TAX (GST)

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

The Service must pay the Supplier any GST payable in respect of the goods supplied in addition to the stated price.

The Service must pay to the Supplier any amount of GST that the Service is required to pay at the same time and in the same manner as the Service is required to pay the consideration for the supply to which the GST relates.

The Supplier must issue a tax invoice in the format required by the Service and the law to the Service for the supply. The tax invoice must set out the amount of the GST payable by the Service.

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.

The Supplier indemnifies the 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 Service the Supplier must produce evidence that it is so registered.

17. TERMS OF PAYMENT

Subject to compliance by the Supplier with these terms and conditions the Service must pay the price stated on the relevant purchase order. The normal terms of payment are 30 days after the end of month the goods or services were received.

18. CONFIDENTIALITY

Except as required by law, 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 Service:

- a. the contents of the relevant purchase order; or
- b. any information acquired by the Supplier, its staff or its contractors concerning any patients, residents and/or clients receiving services at the Service; or
- c. any information regarding the Service, its systems, procedures, staff or activities.

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 Service must comply with.

The Supplier must ensure that its sub-contractors agree to abide by the provisions of this clause.

The obligations imposed by this clause will survive the expiry or termination of the relevant purchase order.

19. ASSIGNMENT

The Supplier may only assign any of its rights under the relevant purchase order with the Service's prior written consent.

20. GOVERNING LAW

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