

## **East Wimmera Health Service – Terms of Trade** (updated August 2020)

### **1. APPLICATION OF TERMS AND CONDITIONS**

These terms and conditions apply to the supply of the goods and/or services described in this Order. The Supplier is deemed to have accepted these terms and conditions when the Supplier accepts this Order.

### **2. TITLE AND RISK**

Title to and the risk in any goods and/or service ordered pursuant to this document does not pass to the Purchaser after payment. Title will pass to the Purchaser after the goods and/or service have been accepted by the Purchaser.

### **3. INSPECTION AND REJECTION**

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

### **4. DELIVERY**

(i.) Deliveries must be made as specified in this Order and the Purchaser will not be required to accept or pay for quantities in excess of that set out in this Order. The Purchaser accepts no responsibility for any goods and/or service delivered to locations or at times other than those specified on this order. Deliveries may only be made to East Wimmera Health Service, associated warehouse or to locations as specified during the following hours 8.30am-4.30pm, on the following days Monday to Friday or as mutually agreed

(ii.) 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).

(iii.) All goods delivered 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.

### **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 Purchaser and must not be disclosed or used except as required by this Order. Upon the completion or other termination of this 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 Purchaser'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 Purchaser and must be delivered to the Purchaser, at the time specified by the Purchaser.

## **6. CANCELLATION**

The Purchaser may cancel this Order or any undelivered part of this Order if the Supplier does not make deliveries strictly in accordance with the delivery schedule or commits any breach of the terms of this Order, 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 Purchaser may have in law or equity.

## **7. LIABILITY**

(i.) The Supplier warrants to the Purchaser that all goods and/or service supplied pursuant to this Order 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/provide the goods and/or service and the goods and/or service are free from any charge or encumbrance. The Supplier guarantees the goods and/or service against patent and/or latent defects for 12 months from acceptance or for the period offered by the manufacturer (if longer).

(ii.) The Supplier must continually indemnify the Purchaser, 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 by them or any of them as a direct or indirect result of the supply of the goods and/or service, a breach of this Order 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 Purchase in relation to this Order. This indemnity is in addition to any other remedies which the Purchaser may have at law or in equity. This indemnity continues after this Order expires or is cancelled.

## **8. INSURANCE**

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

## **9. CONFLICTING CONDITIONS**

(iii.) 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 this Order, the conditions specified in this Order will prevail unless the conditions in this Order expressly contemplate otherwise. Acceptance of this Order and/or (iv.) performance of this 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.

(v.) If the Supplier is unable or unwilling to accept any of the conditions 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 and/or service supplied and claims made under warranties are owed to, and must be enforceable by the Purchaser.

#### **13. COMPLIANCE AND REGULATIONS**

The goods and/or service must comply with all relevant statutory requirements, eg. 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 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.

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.

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.

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

#### **15. PRICE**

The price is stated on this Order and must remain firm. No variation will be accepted, without the prior approval of a duly authorised representative of the Purchaser. All prices quoted are FIS designated delivery point unless otherwise agreed.

#### **16. GST**

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

(vii.) The Purchaser must pay the Supplier any GST payable in respect of the goods and/or service supplied in addition to the stated price.

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

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

(x.) 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 Purchaser 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 Purchaser 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 Purchaser must pay the price stated on this Order.

#### **18. CONFIDENTIALITY**

(xi.) 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 Purchaser:

- a. the contents of this Order;
- b. or any information acquired by the Supplier, its staff or its contractors concerning any patients receiving services at the Purchaser;
- c. or any information regarding the Purchaser, its systems, procedures, staff or activities; except as required by law.

(xii.) 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 Purchaser must comply with.

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

(xiv.) The obligations imposed by this clause will survive the expiry or termination of this Order.

#### **19. ASSIGNMENT**

The Supplier may only assign any of its rights under this Order with the Purchaser'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 proceedings shall be heard at a location in Victoria deemed appropriate by the Purchaser.