

## Purchase Order Terms and Conditions

### 1. Application of these terms and conditions

These terms and conditions apply to the Goods described in the Purchase Order.

### 2. Supply and delivery of Goods

(a) The Supplier must supply the Goods to Austin Health in accordance with this Agreement and any reasonable directions given by Austin Health.

(b) The Supplier must deliver the Goods to the Delivery Point by the Time for Delivery as set out in the Purchase Order. Acceptance of the Goods by Austin Health will not be taken to have occurred until either:

- (i) acceptance is acknowledged in writing by Austin Health; or
- (ii) acceptance is deemed to have occurred in accordance with clause 3(a) below.

(c) Austin Health accepts no responsibility, and will not be liable, for any Goods delivered to a location or at time other than as specified in the Purchase Order.

(d) Where the Supplier delivers the Goods outside of the Time for Delivery, Austin Health is under no obligation to accept delivery and may require the Supplier to deliver the Goods within the Time for Delivery on the next Business Day.

### 3. Acceptance or rejection of Goods

(a) If the Goods conform with this Agreement, Austin Health will promptly issue written notification of acceptance of the Goods. If Austin Health does not give written notification of acceptance or rejection of the Goods within 30 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 (including where the quantity of Goods delivered exceeds the quantity set out in the Purchase Order); or
- (ii) on delivery are damaged, unfit for purpose or not of merchantable quality, Austin Health may reject the Goods by giving written notice (including reasons for rejection) to the Supplier within 30 days of delivery. Austin Health is not obliged to pay for any rejected Goods.

(c) The Supplier must, at its cost, collect and remove any rejected Goods promptly following notification. If the Supplier fails to collect and remove the rejected Goods within 5 Business Days following notification, Austin Health 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 discretion.

(d) Where Austin Health rejects Goods due to the Goods being damaged, the Supplier must deliver such Goods as are necessary to replace the damaged Goods, within 3 Business Days of being notified of the rejection.

### 4. Pricing

(a) The Unit Price is fixed and inclusive of all taxes (excluding GST).

(b) The Supplier may not charge Austin Health 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 Austin Health, unless otherwise agreed in writing.

### 5. Invoicing and payment

(a) At the time of delivering the Goods, the Supplier must provide a tax invoice to Austin Health for the Purchase Price. The tax invoice must set out the Purchase Order number as well as all information required in a tax invoice for the purposes of the GST Act, together with such other information as Austin Health may reasonably require to process the invoice.

(b) Austin Health will pay the invoiced amount within 30 days after the end of the month in which the invoice is received.

(c) Payment of an invoice is not to be taken as evidence that the Goods have been supplied in accordance with this Agreement but must be taken only as payment on account.

### 6. Title and risk

Title in the Goods will pass to Austin Health upon acceptance of the Goods. Risk in the Goods will pass to Austin Health when the Goods are delivered to the Delivery Point.

### 7. Warranties

(a) The Supplier represents and warrants to Austin Health that:

- (i) **(Title)** it has the right to sell, and transfer title to and property in, the Goods to Austin Health;
- (ii) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Goods; and
- (iii) **(Goods)** the Goods:
  - (A) are new and fit for the purpose stated in the Purchase Order (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
  - (B) conform in all respects with this Agreement;
  - (C) are free from defects; and
  - (D) are of merchantable quality and comply with all Laws.
- (b) If the Supplier is not the manufacturer of the Goods, the Supplier must obtain the benefit of any manufacturer's warranties for Austin Health.

## 8. Intellectual Property Rights

The Supplier irrevocably and unconditionally grants to Austin Health 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 Austin Health the full use and enjoyment of those Goods and the Supplier must, upon request by Austin Health, do all things as may be necessary (including executing any documents) to give full effect to such rights.

## 9. Liability

- (a) The Supplier indemnifies, and will at all times keep Austin Health and each of its Personnel indemnified, against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way in connection with, any:
  - (i) the Supplier's breach of this Agreement;
  - (ii) personal injury, including sickness and death;
  - (iii) any loss of, or damage to, tangible property on Austin Health premises;
  - (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.

- (b) The Supplier's liability to indemnify Austin Health under clause 9(a) is reduced to the extent that any wilful, unlawful or negligent act or omission by Austin Health or its Personnel contributed to the liability, loss, damage, cost, expense or compensation.
- (c) To the extent that the indemnity in clause 9(a) refers to persons other than Austin Health, Austin Health holds this clause on trust for those other persons.

## 10. Termination

- (a) Austin Health may terminate this Agreement with immediate effect by giving notice in writing to the Supplier if the Supplier:
  - (i) fails to provide the Goods strictly in accordance with this Agreement;
  - (ii) breaches any provision of this Agreement; or
  - (iii) suffers from an Insolvency Event.
- (b) If Austin Health terminates this Agreement, Austin Health will, if part of the Purchase Order has been delivered, pay the Supplier for the Goods already delivered and Austin Health has no other liability to the Supplier in relation to the termination of this Agreement. The right of termination is in addition to any other remedies which Austin Health may have in law or equity.

## 11. Insurance

- (a) The Supplier must obtain and maintain insurance, at the time of delivery of the Goods sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with this 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.

## 12. Confidentiality and privacy protection

- (a) The Supplier and its Personnel must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person.
- (b) The Supplier acknowledges that it will be bound by the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier for the purposes of the Agreement, in the same way and to the same extent as the Privacy Obligations would have applied to Austin Health in respect of that act or practice had it been directly done or engaged in by Austin Health.

## 13. Access

When at Austin Health's premises, the Supplier must, and must ensure that its Personnel:

- (a) protect people and property;
- (b) prevent nuisance;
- (c) act in a safe and lawful manner;
- (d) comply with the safety standards and policies of Austin Health (as notified to the Supplier); and
- (e) comply with any lawful directions of Austin Health or its Personnel.

## 14. Compliance with Law and policy

- (a) The Supplier must, in performing its obligations under the Agreement, comply with the Laws relevant to the provision of the Goods by the Supplier under this Agreement.
- (b) The Supplier must ensure that in providing the Goods it will comply with all anti-bribery, anti-corruption, anti-money laundering and modern slavery laws.
- (c) The Supplier warrants that it is aware of and will comply with the Victorian State Government's Supplier Code of Conduct (which is available at <https://www.buyingfor.vic.gov.au/supplier-code-conduct-suppliers>). The Contractor acknowledges that nothing in the Supplier Code of Conduct is intended to reduce, alter or supersede any other obligations which may be

imposed on the Supplier, whether under this Agreement or at Law

## 15. GST

- (a) The 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 this Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with the Agreement.

## 16. General

- (a) This Agreement is governed by Laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia.
- (b) Time is of the essence in relation to the supply of the Goods.
- (c) Austin Health may set off against any sum owing to the Supplier under the Agreement any amount then owing by the Supplier to Austin Health.
- (d) The Supplier may not assign any right under this Agreement without the prior written consent of Austin Health. The Supplier will be responsible for acts and omissions of any assignee.

## 17. Entire understanding and order for precedence

- (a) If and to the extent of any inconsistency between these terms and conditions and the Purchase Order, these terms and conditions will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the Purchase Order without otherwise diminishing the enforceability of the remaining provisions of the Purchase Order.
- (b) If the parties have entered into a Supply of Goods Agreement for the supply of the Goods, the terms and conditions of that agreement will apply to any purchase order for the Goods to the exclusion of these terms and conditions.

- (c) This Agreement contains everything the parties have agreed in relation to the Goods. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

## 18. Definitions

In this Agreement:

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

**Austin Health** means Austin Health ABN 96 237 388 063.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

**Code of Practice** means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic).

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, Austin Health, including any information designated by Austin Health 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 Austin Health;
- (d) is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with Austin Health 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.

**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 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).

**Health Privacy Principles** means the health privacy principles set out in the *Health Records Act 2001* (Vic).

**Information Privacy Principles** has the meaning given in the *Privacy and Data Protection Act 2014* (Vic).

**Insolvency Event** means, in relation to the Supplier, any of the following:

- (a) anything that reasonably indicates that there is a significant risk that the Supplier is or will become unable to pay debts as they fall due;
- (b) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the Supplier or any of its assets; or
- (c) the Supplier ceasing, or indicating that it is about to cease, carrying on business.

**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.

**Laws** means:

- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State of Victoria or local or other government in force in the State of Victoria, irrespective of where enacted; and
- (b) lawful requirements of any government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority (including a statutory authority or a State-owned enterprise), a self-regulatory authority established under statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law.

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

**Purchase Order** means any form of order issued by Austin Health for the supply of the Goods, made under or incorporating these terms and conditions.

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

**Supplier** means the entity supplying the Goods under this Agreement.

**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 the Goods must be delivered by the Supplier.

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