

1. The Definitions

The following definitions apply in these Terms:

Aged Care Charters means the charters of care recipients' rights and responsibilities for aged care as set out in Schedules 1 to 3 inclusive of the *User Rights Principles 2014* (Commonwealth);

Aged Care Standards means the standards for provision of aged care set out in the *Quality of Care Principles 2014* (Commonwealth);

Australian Standards means the relevant standard issued by Standards Australia;

Business Day means a day when all banks are open for business in the city of Adelaide;

Claim means any action or demand;

Confidential Information means information about our respective businesses and customers that is not in the public domain;

Contract means the relevant Purchase Order together with these Terms;

Dangerous Goods and **Dangerous Substances** have the same meaning as in the *Dangerous Substances Act 1979* (SA);

Defective means Goods or Services or both which are unsatisfactory, damaged, defective in design, performance workmanship or fail to meet any applicable specifications, plans or requirements of the Purchase Order;

Delivery Address means the delivery address set out in a Purchase Order;

Delivery Date means the delivery date specified in a Purchase Order;

Goods means the property to be provided to us in accordance with a Purchase Order and includes any software and data in electronic format;

GST means the Goods and Services Tax payable under the GST Law;

GST law means *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth);

Home Care Agreement means a home care agreement under the *Aged Care Act 1997* (Commonwealth)

Statutory Requirements means any Australian legislation and includes any licences or permits or consents necessary for you to supply the Goods or Services or both;

Personal Information has the same meaning as in the *Privacy Act 1988* (Commonwealth);

Price means the price set out in a Purchase Order;;

Services means the services to be provided by you to us under a Purchase Order;

Site means the site set out in the Purchase Order (if applicable);

Tax Invoice means a tax invoice as defined in the GST law;

Terms means these terms;

we or **us** means Accept Care Group ABN 60 161 586 125 of 46 Tynte Street, North Adelaide SA 5006;

you means the person named in the Purchase Order and includes your employees, agents and contractors;

Warranty Period means any period specified in the Purchase Order.

2. Agreement

- 2.1 You and we agree that these Terms comprise the entire agreement between you and us for the supply of Goods or Services or both. Every time that we issue an order to you, these Terms are incorporated into the Purchase Order and form the Contract between you and us.
- 2.2 You are deemed to have accepted these Terms as soon as you commence to supply the Goods or Services or both to us
- 2.3 Any terms supplied by you including those supplied with the Goods or Services or both or printed on consignment notes or other documents are of no legal effect and are not part of the order.
- 2.4 You are bound by these Terms even if the Purchase Order has not been signed by you.
- 2.5 If you have provided your standard terms with any quotation for the supply of the Goods or Services or both, those terms are replaced by this Contract as soon as you commence to supply the Goods or Services or both.
- 2.6 This Contract starts on the date of the first order issued by us to you and continues until it is terminated in accordance with this Contract, or for any term which is specified in the Purchase Order.
- 2.7 If there is more than one of you, then you are jointly and separately liable for the performance of your obligations under this Contract.

3. Price and payment

- 3.1 We must, subject to anything written in the Purchase Order, pay the Price to you. The Price is inclusive of all delivery charges (unless specified otherwise in the Purchase Order) and all taxes including GST.

- 3.2 You may only invoice us after you have provided the Goods or Services or both, unless otherwise specified in the Purchase Order.
- 3.3 Your Tax Invoice must be consistent with the requirements of the Purchase Order.
- 3.4 Accept Care Group will pay each correctly prepared and submitted tax invoice within 30 days from the end of the calendar month in which the tax invoice was received.
- 3.5 However, we may dispute the Tax Invoice in which case:
 - (a) we must pay any undisputed part of the relevant Tax Invoice and dispute the balance; and
 - (b) if the resolution of the dispute determines that we must pay a further amount to you, we must pay that amount within 7 days of the resolution of that dispute.
- 3.6 We do not pay any interest on any due and unpaid Tax Invoice sent by you.
- 3.7 We may reduce any payment due to you under this Contract by any amount for which we, in our reasonable opinion consider that you may be liable to us under these Terms. This does not limit our right to recover those amounts in other ways.
- 3.8 Our payment does not constitute our acceptance that the Goods or Services or both are not Defective and does not affect our rights under the Contract.
- 3.9 You can only claim for a variation in the Price on account of changes to your costs in supplying the Goods or Services or both if you say so in the Purchase Order. Otherwise, we do not have to accept any claim from you on that account.
- 3.10 The Price must be inclusive of GST.

4. Variation

- 4.1 Subject to this clause, we may by written notice to you vary the order set out in the Purchase Order. Our notice may only include a change of the Goods or Services or both, or a change to the Delivery Date or time for delivery, or the Delivery Address.
- 4.2 If this variation causes an increase or decrease in the Price or a change to the required Delivery Date then you must tell us within 3 business days of the receipt by you of the variation notice.
- 4.3 You must not supply the Goods or Services or both as varied under the variation notice until we have agreed in writing to your adjusted Price or adjusted Delivery Date.
- 4.4 Subject to this clause, you may by written notice to us vary the order set out in the Purchase Order. Your notice may only include a change of the Goods or Services or both, or a change to the Delivery Date or time for delivery, or the Delivery Address.

- 4.5 We must tell you within 3 business days of the receipt by us of the variation notice whether we agree to the variation, whether we cancel the order set out in the Purchase Order or we require you to comply with the original order set out in the Purchase Order.
- 4.6 You must not supply the Goods or Services or both as varied under the variation notice until we have agreed in writing to the variation.

5. Time for performance

- 5.1 You must supply the Goods or Services or both in accordance with the Purchase Order by the Delivery Date.
- 5.2 Time is of the essence.
- 5.3 If you do not supply the Goods or Services or both by the Delivery Date, we may in addition to all other rights and remedies:
 - (a) set off against the Price any additional costs incurred by us because of your failure to supply the Goods or Services or both by the Delivery Date; or
 - (b) terminate the order.

6. Quality of Goods and Services

- 6.1 The Goods or Services or both must:
 - (a) match any description referred to in the Purchase Order;
 - (b) comply with all Statutory Requirements applicable to the Goods or Services or both;
 - (c) be fit for the purpose for which the Goods or Services or both are commonly supplied or bought for and for any other purpose we have specified in the Purchase Order;
 - (d) be free from all defects;
 - (e) comply with any specifications or plans supplied by us and set out in the Purchase Order or elsewhere;
 - (f) be in accordance with a recognised industry standard or relevant Australian Standard;
 - (g) comply with any applicable Therapeutic Goods Administration Standards under the *Therapeutic Goods Administration Act 1989* (Commonwealth); and
 - (h) meet the standards that would be expected of a skilled and experienced supplier who supplies Goods or Services or both similar to the Goods or Services or both supplied by you to us.

- 6.2 If you gave us a sample of the Goods or a demonstration of the Services, the Goods or Services or both must be of the same nature and quality as the sample or demonstration given or provided.
- 6.3 The Goods must be of a merchantable quality, supplied with a clear title to us and unless otherwise specified in the Purchase Order must be new.
- 6.4 All Services provided by you must be undertaken by persons who are appropriately licenced, qualified and trained to provide those Services.
- 6.5 If all or part of the Goods are Defective or otherwise do not comply with this clause:
 - (a) we may return those Goods to you at your risk and expense; and
 - (b) you must if we ask you to do so, reimburse us any amount paid by us for the returned Goods including the costs of the delivery or return of those Goods; or
 - (c) if we agree, you may resupply those non-defective Goods at your cost.
- 6.6 If the Services are Defective, you must if requested by us:
 - (a) re-perform the Services at your cost; or
 - (b) rectify any substandard work done or any damage caused by you at your cost.

7. Delivery

- 7.1 You must deliver the Goods to the Delivery Address by the Delivery Date.
- 7.2 You must at your cost, properly pack and protect all Goods to ensure safe arrival and in accordance with industry best practice.
- 7.3 You must, unless otherwise agreed in the Purchase Order, provide all installation instructions, maintenance and operating manuals, engineering data, spare parts lists and other information as reasonably required for the installation, operation and maintenance of the Goods at the time of delivery.
- 7.4 You must ensure that packing slips accompany all deliveries.
- 7.5 If the Goods include any Dangerous Goods or Dangerous Substances, you must comply with any Statutory Requirements in relation to them and provide written instructions on how to handle them at the time of delivery.
- 7.6 You must supply all delivery dockets such as cart notes, delivery dockets and invoices to us which clearly show our order number as contained in the Purchase Order.
- 7.7 You must pay for all packing and freight charges, unless you specify otherwise in the Purchase Order.

- 7.8 If the Goods are shipped or freighted to us, you must inform us immediately when they are sent and advise us how they will be routed to us.
- 7.9 Upon receipt of the Goods, we must inspect the Goods as soon as possible to ensure compliance with the Purchase Order. Our obligation to inspect the Goods under this clause does not affect our rights under the Contract.

8. Title and risk

- 8.1 Title to and property in the Goods passes to us upon the earlier of:
 - (a) us taking delivery of the Goods; or
 - (b) payment of the Price.
- 8.2 Risk in the Goods passes to us upon the later of:
 - (a) the installation of the Goods if so specified in the Purchase Order; or
 - (b) title and property in the Goods passes to us.
- 8.3 You warrant that:
 - (a) you have complete ownership of the Goods free of any liens, charges or encumbrances, and you are providing the Goods to us on that basis; and
 - (b) we are entitled to possession of the Goods.
- 8.4 For the purposes of clause 8.1 and to allow us a reasonable opportunity of examining the Goods before acceptance, we take delivery of the Goods on the first to occur of the following:
 - (a) we notify you in writing that the delivered Goods are accepted;
 - (b) we start to use the delivered Goods for the intended purpose of the Goods;
 - (c) 7 days from the date of delivery of the Goods to us unless in the meantime we have notified you in writing that the Goods are not accepted and the reasons for this.

9. Warranties

- 9.1 By this Contract, you assign to us the benefits of any warranties provided by the manufacturers of the Goods or materials or the components which are used in the performance of the order set out in the Purchase Order where we ultimately take ownership of those Goods, materials or components.
- 9.2 If specified in the Purchase Order, you also provide to us a warranty for the Warranty Period that the Goods are not Defective and that the Services are not Defective.

10. Site

If you are entering the Site or performing work on the Site, you:

- 10.1 enter the Site entirely at your own risk;
- 10.2 must comply with all policies and procedures specified by us including those relating to health, safety, security and the environment, copies of which have been provided to you;
- 10.3 must comply with our occupational health, safety and welfare and injury management and rehabilitation policy, copies of which have been provided to you;
- 10.4 must ensure that anyone engaged or employed by you carries an appropriate form of identification;
- 10.5 must comply with our contractor's code of conduct a copy of which has been provided to you;
- 10.6 must, if requested by us, complete any site orientation, sign or complete any of our forms relating to the policies and procedures specified by us;
- 10.7 must, if we request it, obtain a national police clearance certificate on your agents, employees and contractors to enable us to comply with our obligations under the *Aged Care Act 1997* (Commonwealth) and provide an original or certified copy to us;
- 10.8 must immediately notify us if any of your agents, employees or contractors is arrested, charged or convicted of any form of assault and you know about it;
- 10.9 must ensure that you have systems in place to comply with your obligations under clauses 10.7 and 10.8 of these Terms;
- 10.10 must ensure that the supply of the Goods or the Services or both does not cause us to breach a Home Care Agreement relating to the Site or our obligations under the *Aged Care Act 1997* (Commonwealth);
- 10.11 must acquaint yourself with the Site and the location nature of any service facilities including electrical and gas pipes, national broadband network or other data transmission cables;
- 10.12 must inform us when you are likely to attend at the Site unless that is already specified in the Purchase Order;
- 10.13 must undertake any work on the Site without disrupting the normal routine of the residents of the Site and our staff on the Site; and
- 10.14 must deliver the Services in accordance with the Aged Care Charters and the Aged Care Standards (copies of which are available from us);

- 10.15 must not cause us to breach our obligations under the *Aged Care Act 1997* and the Principles enunciated under that Act;
- 10.16 must comply with any notice given by us that a person named in the notice is to be removed from the Site and not used any further in the provision of the Services, and if this occurs, you must ensure that this person is replaced by someone of at least equivalent skills and qualifications;
- 10.17 must keep the Site reasonably clean and tidy while the Goods are being delivered or the Services are being performed and you must leave them clean and tidy on completion;
- 10.18 must co-operate and coordinate with any other person providing Services to us at the Site at the same time as you are;
- 10.19 must at your cost make good any damage to the Site apart from fair wear and tear and any fixtures or fittings at the Site done by your employees, agents or subcontractors.

11. Relationship and reporting

- 11.1 Our relationship with you is that you are an independent contractor to us.
- 11.2 No joint venture, partnership, employer, employee or other relationship exists between you and us.
- 11.3 Despite the relationship between you and us, you must comply with all of our reasonable directions in the supply of the Goods or Services or both.
- 11.4 You must, at your own cost, supply all labour, tools, equipment and materials necessary for the supply of the Goods or Services or both.
- 11.5 You must procure your employees and contractors to comply with your obligations under this Contract.
- 11.6 If we reasonably request it, you must provide to us a written report on the delivery of the Goods or the performance of the Services or both under each order in accordance with the Purchase Order. You must do so within 14 days of our request or such other time period as agreed between us.

12. Assignment and subcontracting

- 12.1 We may assign any or all of our obligations and rights under this Contract at any time.
- 12.2 You may assign any or all of your obligations and rights under this Contract with our prior written consent, which must not be unreasonably withheld. However, you still remain liable even though you have assigned your obligations and rights.
- 12.3 You may subcontract your rights and obligations under this Contract with our prior written consent which must not be unreasonably withheld.

- 12.4 However, if we give our consent to you subcontracting, you are still liable to us for the performance of your subcontractor.

13. **Insurance**

- 13.1 You must take out and maintain the levels of product liability and public liability insurance cover set out in the Purchase Order.
- 13.2 If appropriate, you must take out and maintain the level professional indemnity insurance cover set out in the Purchase Order.
- 13.3 You must take out and maintain that insurance with a licensed insurer carrying on business in Australia.
- 13.4 You may choose to take out other insurance consistent with your position as an independent contractor to us. If you are unable to perform the Services and supply Goods under this contract because you are ill or have suffered an accident, it is up to you to insure against that risk or have someone else provide the Goods or the Services or both in accordance with this Contract.
- 13.5 You must, at our request, provide to us written evidence of the insurance cover required under this clause.

14. **Indemnity**

- 14.1 You indemnify us against any liabilities sustained by us because of any act or omission by you or your employees, agents or contractors in carrying out the order in accordance with the Purchase Order.
- 14.2 Your liability to indemnify us under this clause is reduced in proportion to the extent that any act or omission by us contributes to such liability.
- 14.3 We indemnify you against any liabilities sustained by you because of any act or omission by us or our employees, agents or contractors in carrying out the order in accordance with the Purchase Order.
- 14.4 Our liability to indemnify you under this clause is reduced in proportion to the extent that any act or omission by you contributes to such liability.

15. **Confidentiality and privacy**

- 15.1 If either we or you obtain any confidential information about each other because of this Contract, then we and you must not disclose that Confidential Information without the consent of the other person or as required by law.
- 15.2 If either we or you obtain Personal Information as a result of this Contract about any person then either we or you must handle that information in accordance with the *Australian Privacy Principles* and the *Privacy Act 1988* (Commonwealth).

15.3 You must immediately notify us if you know of or suspect unauthorised use, copying or disclosure of such Personal Information.

15.4 You must ensure that you have systems in place to comply with the requirements of this clause.

16. **Dispute resolution**

16.1 If we have a dispute with you, or you have a dispute with us, then either you or we can give the other a written notice giving details of the dispute.

16.2 Within 14 days of receiving a notice under clause 16.1, we and you must meet and attempt to resolve the dispute in good faith.

16.3 If, within 14 days of that meeting the dispute is still not resolved then either you or us may proceed to litigation or some other type of alternative dispute resolution.

16.4 Despite the existence of the dispute, you and we must continue to fulfil our respective obligations under this Contract.

17. **Termination**

17.1 We may terminate this Contract:

- (a) immediately on written notice to you if you become insolvent;
- (b) on giving 14 days' written notice to you, if you fail to supply the Goods or Services or both by the Delivery Date unless those Goods or Services are properly supplied within that notice period;
- (c) on giving 5 Business Days' written notice to you;
- (d) if the Goods or Services or both are provided by you to us so that we can fulfil our obligations under a Home Care Agreement with a customer of ours then we may terminate this agreement by written notice upon the ending of our Home Care Agreement with our customer;
- (e) you have committed a material breach of this Contract and you have not remedied that material breach within 14 days of us sending to you a written notice setting out the material breach and what you need to do to fix the material breach.

17.2 If we terminate the Contract under clause 17.1(c) or (d) and the Goods or any part of them have been manufactured in accordance with our unique specifications, then you are entitled to your reasonable costs incurred for the provision of the Goods supplied up to the date of termination and we receive title to any materials or Goods that are paid for under this clause.

17.3 Upon receipt of a termination notice under clause 17.1(a), (c), (d) or (e) you must unless we say otherwise, cease work and follow our directions as to disposal of work in progress and finished Goods.

17.4 You may terminate this Contract:

- (a) immediately on written notice to us if we become insolvent; or
- (b) on giving 5 Business Days' written notice to us.

17.5 If you terminate this Contract under clause 17.4(b), you must pay our reasonable costs in sourcing alternative Goods or Services or both to fulfil the requirements of the order in accordance with the Purchase Order.

17.6 Upon termination of this Contract, you must return to us any Confidential Information of ours, any Personal Information in relation to our customers, and any keys, security devices or other property of ours which you have in your possession or in the position of your agents, employees or contractors.

18. **Jurisdiction**

The laws of South Australia govern this Contract and we and you agree to submit to the appropriate court in South Australia having jurisdiction to determine the matter. This is even if you supply the Goods or perform the Services outside of South Australia.

19. **Severance**

Where any provision of this Contract is unenforceable, it may be severed without affecting the enforceability of the other provisions in this Contract.

20. **Notice**

Any written notice may be given by either you or by us and served by post, facsimile transmission or email to the other at the address fax number or email address set out in the Purchase Order.