

# Purchase Conditions for Goods and Services

## 1. The Contract

- (a) A Contract will be formed between Mater and the Supplier:
  - (i) on the terms of these Mater Purchase Conditions for Goods and Services when Mater issues a Purchase order; unless
  - (ii) this order is made under one of the following:
    - (A) a Standing Offer Arrangement, then Standing Offer Arrangement Terms and Conditions apply; or
    - (B) an existing written Contract, which is not a Standing Offer Arrangement, then the terms and conditions of the written Contract apply.
- (b) The Contract if formed under 1(a)(i) commences on the first Business Day from the issue of the Purchase Order and continues for and until the earlier of the expiry of the Defect Liability Period or termination.

## 2. Agreement to Supply

- (a) The Supplier must carry out the Supply by the Delivery Date/s in accordance with the Contract and immediately notify Mater of any actual or anticipated delay in performing the Supply.
- (b) Unless otherwise specified in the Purchase Order:
  - (i) the Supplier must supply all equipment, consumables and materials and importation licences/approvals necessary for the performance of the Supply in accordance with the Contract; and
  - (ii) the Price is fixed and inclusive of all taxes (excluding GST), stamp duty, delivery, handling, courier and postage fees and the matters identified in clause 2(b)(i).

## 3. Subcontracting and assignment

The Supplier must not subcontract, assign, novate, transfer, delegate or otherwise deal with the Contract or any right, obligation, duty or responsibility under it, except with the prior written consent of Mater.

## 4. Laws and regulations

The Supplier must:

- (a) comply with all laws, government requirements, codes and standards and Mater Policies affecting or applicable to the Supply;
- (b) pay any fees, charges, levies and taxes imposed by a government entity in relation to the Supply.

## 5. Quality of workmanship

The Supplier warrants that:

- (a) it (and its Personnel) will at all times be suitably qualified, accredited and experienced to perform the Supply; and
- (b) the Supply will be performed in accordance with:
  - (i) best practice standards of diligence, skill, care and efficiency to be expected of a competent Supplier performing a supply of a similar nature to the Supply;
  - (ii) all the requirements of the Contract; and
  - (iii) any specifications and warranties related to the Supply (whether provided by Mater as part of the Purchase Order or the manufacturer of the Goods);

- (c) where the Supply is or includes the supply of Goods, the Goods:
  - (i) will be of merchantable quality and fit for their intended purpose, and be free from all Defects and any imperfections affecting performance; and
  - (ii) to the extent applicable:
    - (A) will be clinically suitable and functional;
    - (B) will meet (and will continue to meet) all legislative requirements (including registration or listing requirements if the Goods are therapeutic goods); and
    - (C) will have a minimum shelf life of 12 months from the Delivery Date or as otherwise specified in the Purchase Order.
- (d) that where the Supplier is engaged to provide a Health Service that would require a Healthcare Practitioner that the Supplier's Personnel undertaking said Service is a qualified, accredited, suitably experienced, capable Health Practitioner, which is maintained throughout the Service as required by Law.

## 6. Defects liability period

- (a) During the Defects Liability Period the Supplier must, at its expense, rectify any Defect within a reasonable time of notification by Mater of the Defect.
- (b) If the Supplier fails to remedy the Defect in accordance with clause 6(a) to the satisfaction of Mater, Mater may, without prejudice to its other rights, rectify that Defect and the costs incurred in doing so will be a debt due from the Supplier to Mater.

## 7. Rejection of Supply

- (a) Within 5 Business Days of delivery of the Goods to the Site or notification from the Supplier that the Services are completed, Mater may reject the Supply by giving notice to the Supplier. Mater's notice must state the reasons for rejection and may:
  - (i) require the Supplier to remove the Goods and refund to Mater any amount paid in relation to those Goods;
  - (ii) direct the Supplier to replace or rectify the Supply; or
  - (iii) elect to accept the Supply and claim damages for the Supplier's failure to comply with the Contract.
- (b) If the Supplier is directed to replace or rectify the Supply, the Supplier must notify Mater when the replacement or rectification is completed and clause 7(a) will apply.
- (c) The Supplier must provide Mater access to the places where the Supply is being performed for the purpose of inspecting the Goods and/or work in progress.
- (d) Nothing in this clause 7 or Mater's payment for the Supply affects Mater's subsequent rights in respect of a Supply that does not comply with the Contract.
- (e) Without limiting these Purchase Conditions or any other rights Mater may have, where the Supplier is the subject of a request, court order or other

directive of a government agency including the TGA to recall the Goods; is required by law to commence a recall of the Goods; or initiates voluntary action to recall the Goods, the Supplier must immediately notify Mater. The Supplier must at its own cost provide alternative goods (or substitute goods until the Goods are rectified) that are TGA compliant and equivalent to the affected Goods within 30 days (or such other period as agreed in writing) of issue of the recall notice.

## 8. Payment

- (a) The Supplier may render a tax invoice to Mater at the end of each month, in respect of the Goods delivered and/or Services performed in that month, calculated by reference to the Price.
- (b) The Supplier will ensure that each invoice includes the following:
  - (i) 'Tax invoice' or 'Credit memo' listed at the top (credit memos must reference the original invoice);
  - (ii) Supplier's name, address and ABN number at the top;
  - (iii) Reference number/invoice number;
  - (iv) Date in DDMMYYYY format;
  - (v) Mater legal entity name and ABN as listed on the purchase order;
  - (vi) A contact name for delivery;
  - (vii) Purchase order (PO) number;
  - (viii) Total NET amount, exclusive of GST;
  - (ix) Total GST applicable;
  - (x) Total Gross amount inclusive of GST;
  - (xi) Which items have GST and which do not (clearly state split tax codes)
  - (xii) Currency code (if not in AUD).
- (c) Subject to the Contract, Mater will pay a correctly rendered tax invoice within 30 days from the end of the month in which the tax invoice is received. Without limiting clause 7(d), payment is on account only.
- (d) If a party makes a supply under or in connection with the Contract in respect of which GST is payable, the consideration for the supply but for the application of this clause 8(c) (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

## 9. Right of set off

- (a) Mater may at any time, deduct from any amount otherwise due to the Supplier any debts or other amounts due from the Supplier to Mater and the amount of any bona fide claims that Mater has against the Supplier under or in connection with the Contract.
- (b) Mater must notify the Supplier in writing of any amounts deducted under clause 9(a) and the basis for the deduction.

## 10. Risk in the Supply

- (a) The Supplier warrants that title in the Goods and materials supplied by the Supplier, when it passes to Mater under clause 10(b), will be free and clear of any and all liens, restrictions, reservations, security interests and encumbrances.
- (b) Title to any part of the Goods or other deliverables the subject of the Supply passes to Mater upon the earlier of payment for the Supply, provision of the Services to Mater, delivery of the Goods to the Site or the incorporation of the materials (as applicable) into the physical manifestation of the Services.

- (c) The Supplier must protect and bears the risk of loss or damage to the Goods until they are delivered to the Site, and the materials and the physical manifestation of the Services until completion of the Services.

## 11. Insurance

- (a) The Supplier must maintain and, immediately upon request by Mater, provide Mater with copies of its certificate of currency for product liability insurance, (providing cover in respect of each and every claim to an amount of not less than \$[20] million), public liability insurance (providing cover in respect of each and every claim to an amount of not less than \$[20] million), professional indemnity insurance (to the extent applicable, providing cover in respect of each and every claim to an amount of not less than \$[2] million), workers compensation and motor vehicle and transit insurance (to the extent applicable).
- (b) The Supplier must ensure that the insurance policies required by clause 11(a) are effected with an insurance company authorised or licenced to operate in Australia with a security rating from A.M. Best Rating Services, Inc. of not less than "A-", on terms and conditions that are reasonably commercially available.

## 12. Indemnity

- (a) The Supplier indemnifies Mater against all Losses arising in connection with:
  - (i) damage to any third-party property whether located on the Site or otherwise;
  - (ii) death or injury to any person;
  - (iii) a breach by the Supplier or Supplier's Personnel of any law; or
  - (iv) a breach by the Supplier of clause 13 or clause 14, to the extent the Losses arise in connection with any act, error or omission of the Supplier or Supplier's Personnel.
- (b) The Supplier's liability to indemnify Mater under this clause 12(a):
  - (i) will be reduced proportionally to the extent that the Losses are caused or contributed to by Mater or Mater's personnel; and
  - (ii) is a continuing obligation, separate and independent from the other obligations of the Supplier and survives the termination of the Contract.

## 13. Intellectual property rights

- (a) The Supplier warrants that the intellectual property rights of a third party will not be infringed by the performance of the Supply under the Contract or the use of the Supply by Mater.
- (b) Mater will own any intellectual property rights in any data, information or materials created, developed or produced in connection with provision of the Supply by the Supplier.

## 14. Confidentiality and Privacy

- 14.1 A party may only use confidential information of another party for the purposes of this Contract, and must keep the existence and the terms of this Contract confidential except where:
  - (a) the information is public knowledge (but not because of a breach of this Contract) or the party has independently created the information;
  - (b) disclosure is required by law or a regulatory body (including a relevant stock exchange); or
  - (c) disclosure is made to a person who must know for the purposes of this Contract on the basis that the person keeps the information confidential.

- 14.2 If the Supplier collects or has access to Personal Information in order to perform the Contract, when performing this Contract, the Supplier must:
- (a) comply with the Australian Privacy Principles in the Privacy Act 1988 (Cth).
  - (b) not transfer any Personal Information collected or accessed in connection with the Contract, outside of Australia, except with the prior written consent of the Mater; and
  - (c) take any steps to prevent unauthorised use or disclosure of Personal Information collected or accessed in connection with the Contract that are reasonably notified by the Mater.

**15. Cybersecurity Clause**

- (a) Supplier will:
  - (i) take appropriate organizational and technical measures to ensure the confidentiality, integrity and availability of Supplier Operations, Goods and Services. These measures will be consistent with good industry practice and will include an appropriate information security management system consistent with current standards such as ISO/IEC ISO27001 or IEC 62443 (to the extent applicable); and
  - (ii) upon Mater's request, provide written evidence of its compliance with this clause, including generally accepted audit reports such as SSAE-16 SOC 2 Type II.

**16. Default and termination**

- (a) Mater may terminate this Contract (in whole or in part) immediately by written notice to the Supplier:
  - (i) if the Supplier becomes insolvent or bankrupt;
  - (ii) if, following notification from Mater that the Supplier has failed to perform or comply with any of its obligations under the Contract (Supplier Default), the Supplier fails to remedy the Supplier Default within a reasonable time and to the satisfaction of Mater; or
  - (iii) for any reason in Mater's absolute discretion. Mater is not required to provide the Supplier with any reasons and may engage another Supplier to perform the Supply (or any part of the Supply) terminated under this subclause 16(a)(iii).
- (b) On receiving a notice under clause 16(a), the Supplier must:
  - (i) immediately cease performance of the Supply to the extent specified in the written notice;
  - (ii) immediately take all possible action to mitigate any Losses incurred by it or Mater as a result of such termination; and
  - (iii) take any action relating to the termination of the Contract reasonably required by Mater. (c) Without limiting any other rights or remedies Mater may have, if Mater terminates under clause 16(a)(i) or 16(a)(ii), the Supplier must pay or reimburse Mater's reasonable costs of obtaining replacement Goods and/or Services.
- (d) Upon termination under clause 16(a), Mater will pay to the Supplier the Price for the provision of the Supply up to the date of such termination. If Mater terminates the Contract under clause 16(a)(iii), Mater will also pay to the Supplier any

costs for Goods properly ordered prior to the date of termination for which the Supplier has paid or is legally bound to pay, provided the Supplier complies with its obligations under clause 16(b) and such costs are substantiated to Mater.

**17. Anti-slavery**

The Supplier must provide Mater with any information it reasonably requires (and provide all reasonable assistance) to enable Mater to comply with its obligations under all applicable anti-slavery laws and government requirements affecting or applicable to the Supply.

**18. Miscellaneous provisions**

- (a) A notice under the Contract must be in writing, in English and addressed to the receiving party, and will be deemed to have been received:
  - (i) if posted, on the 4th day after posting;
  - (ii) if delivered personally, upon delivery; or
  - (iii) if sent by email on a Business Day, on dispatch of the transmission or on a day other than a Business Day, on the next Business Day, unless the sender's server indicates a malfunction or error in transmission, or the recipient immediately notifies the sender of an incomplete transmission. All notices sent by email must be sent to the party's nominated contact person under the Contract, or to another person if the other party directs.
- (b) If there is any discrepancy, inconsistency or ambiguity between a Purchase Order and these Standard Purchase Conditions, the Purchase Order shall prevail. The Purchase Order and these Standard Purchase Conditions shall have precedence over any other documents forming part of the Contract.
- (c) All provisions of the Contract which, expressly or by implication from their nature, are intended to survive rescission, termination or expiration of the Contract (including Mater's rights under the Contract in respect of any Defect in the Supply) will survive the rescission, termination or expiration of the Contract.
- (d) The Contract contains the entire agreement between the parties and supersedes all prior arrangements between the parties relating to the Goods or Services (any Supplier terms and conditions contained in delivery notes, invoices, quotes or elsewhere are expressly excluded).
- (e) The Contract is governed by and must be construed and enforced in accordance with the laws of Queensland, Australia and the parties unconditionally submit to the exclusive jurisdiction of the courts of Queensland, Australia (and courts of appeal from them).

**19. Interpretation**

In the Contract unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and a gender includes all other genders;
- (b) the words 'include' and 'including' are to be construed without limitation;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) a reference to:
  - (i) a clause, schedule or appendix is a reference to a clause, schedule or appendix to the Contract and a reference to the Contract includes any schedules and appendices;
  - (ii) a document or agreement includes a reference to that document or agreement

- as novated, altered or replaced from time to time;
- (iii) 'A\$', '\$A', 'AUD', 'dollar' or '\$' is a reference to Australian currency; (iv) a person includes any individual, firm, body corporate, partnership, unincorporated association, government, state or agency of a state, joint venture or authority;
  - (iv) a party includes its executors, administrators, successors and permitted assigns; and
  - (v) where a party is more than one person the Contract binds all of them separately and each of them together.

## 20. Definitions

Unless the context otherwise requires, the following terms have the meanings given when used in the Contract.

**AEST** means Australian Eastern Standard Time, Brisbane.

**Business Day** means between 9:00am and 5:00pm AEST on a day other than a Saturday, Sunday or public holiday in Queensland.

**Contract** means the Contract as defined in clause 1.

**Confidential Information** means all information disclosed by or on behalf of the Customer, or the Supplier ("**Discloser**") to the other party ("**Recipient**") in connection with an Invitation to Offer, a Request for Quote or a Contract or created using that information, which is confidential in nature and designated as confidential or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information, and (in the case of the Customer) all Customer Data. Confidential Information does not include any information which:

- (a) is or becomes public, except through breach of a confidentiality obligation;
- (b) the recipient can demonstrate was already in its possession or was independently developed by the recipient; or
- (c) the recipient receives from another person on a non-confidential basis.

**Data** means meta-data, information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Information Technology (IT) System.

**Defect** means any deficiency, fault, error, omission or non-compliance with the requirements of the Contract.

**Defects Liability Period** means the period of [12] months on and from the completion of the Supply in accordance with the Contract.

**Delivery Date** means the date/s specified in the Contract by which the Goods and/or Services are to be supplied to Mater or if no date/s are specified, within a reasonable time.

**Goods** means the goods the Supplier will provide, described in the Contract.

**GST** has the meaning given in the GST Law and includes an amount payable under or in accordance with section 5 of the GST and Related Matters Act 2000 (Qld) or the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Health Practitioner** has the meaning given in the Therapeutic Goods Act 1989.

**Health Service** has the meaning given in the Privacy Act 1988 (Cth)

**Information Technology (IT) System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server,

cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, Data storage device, networking equipment or back up facility.

**Losses** means losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

**Mater's Corporate Policies** means the Mater policies, codes and principles, including the Supplier Code of Conduct, notified by Mater to the Supplier.

**Mater** means Mater Misericordiae Limited ABN 83 096 708 922, Mater Foundation Limited as Trustee for the Mater Foundation ABN 96 723 184 640, Mater Research Limited ABN 28 109 834 719 and Mater Education Limited ABN 50 148 130 349, as named in the Purchase Order.

**Medical Device** means a Good that has the meaning given in the Therapeutic Goods Act 1989 and further informed by the Therapeutic Goods (Medical Devices – Specified Articles) Instrument 2020 and Therapeutic Goods (Medical devices) Regulations 2002.

**Personnel** means officers, directors, employees, agents, and subcontractors.

**Personal Information** has the meaning given in the Privacy Act 1988 (Cth)– in that Act.

**Price** means the prices, fees and rates or other amounts set out or referred to in the Purchase Order.

**Services** means the services the Supplier will perform, described in the Contract.

**Site** means the areas specified in the Purchase Order for the performance of the Supply (including delivery of the Goods).

**Supply** means all obligations, duties and responsibilities of the Supplier under the Contract and any incidental work that can be reasonably inferred as necessary or appropriate to perform the Services and/or supply the Goods (as applicable) in accordance with the Contract.

**Supplier** means the party named as the 'Supplier' in the Purchase Order.

**Supplier Operations** means all assets, processes and systems (including information systems), data (including Customer Data), personnel, and sites, used or processed by the Supplier from time to time in the performance of this Contract.

**TGA** means the Therapeutic Goods Administration of the Australian Government Department of Health.