

RFQ Contract Conditions

A. The Contract

1.1 Contract formation

- (a) A Contract will be formed between the Mater and the Supplier, on the earlier of:
- (i) the date when Mater's authorised representative signed letter of award accepting the Supplier's offer under this Request for Quote ('RFQ'); or
 - (ii) the date when Mater issues a Purchase Order under clause 1.3 in response to this Request for Quote.

1.2 Hierarchy

- (a) This Contract may consist of a number of documents. If there is any inconsistency between the documents which make up the Contract, then the following will prevail in descending order of precedence:
- (i) Mater Supplier Code of Conduct;
 - (ii) the Contract Departures; or document containing contract changes or departures agreed between Mater and the Supplier ;
 - (iii) these RFQ Contract Conditions;
 - (iv) the RFQ; and
 - (v) any document incorporated by reference.

1.3 Purchase Orders

From time to time, Mater may issue the Supplier with a Purchase Order containing contract terms and conditions for the supply of goods and/or services, nevertheless the Supplier acknowledges that the terms and conditions of this Contract apply for any Purchase Order issued for this RFQ.

2. No exclusivity

It is expressly understood and agreed by the parties that this is not an exclusive Contract. Nothing in this Contract will be construed as creating any exclusive arrangement with a Supplier or prohibits Mater from either acquiring similar, equal, or like goods and/or services or from executing additional Contracts with other suppliers.

3. Term

- (a) The Contract starts on the Start Date and continues for the period set out in the Contract, including any extension options which are exercised.
- (b) Mater must give written notice of its intention to exercise any extension option.

4. Supplier general obligations

The Supplier:

- (a) must meet all due dates specified in the Requirements or otherwise agreed, and perform all other obligations promptly;
- (b) will promptly notify Mater if it believes it will not be able to meet any due date;
- (c) must provide the Goods and/or Services in accordance with the Contract and all Laws;
- (d) must meet, and ensure that the Goods and/or Services meet, the Requirements, and meet or exceed the performance measures specified in the Contract (if any);
- (e) must ensure that all Goods and/or Services are of a high quality, professional standard and fit for their usual purpose and any other purpose disclosed by Mater;

- (f) must comply with all Mater's policies, codes of conduct, rules, standards and procedures which apply to the Site or Mater's Personnel or use of 'Mater' Inputs, all Site policies and workplace health and safety policies applicable to the Site, and all other Mater policies listed in the Requirements. If Mater introduces new policies relevant to the Supplier's obligations under this Contract, or amends a relevant policy, the Supplier will comply with the new or amended policies. Copies of the relevant policies are available on request;
- (g) must comply with all reasonable directions of Mater in relation to the Supplier's performance of the Contract;
- (h) must take care of Mater Inputs, and only use Mater Inputs for the purpose of performing the Contract, to the extent necessary to perform the Contract, and in accordance with the Contract. If the Supplier loses or damages any Mater Inputs, the Supplier will, at the election of the Mater, promptly replace such Mater Inputs or pay Mater the reasonable replacement cost of such Mater Inputs. As between the Supplier and Mater, Mater retains all right, title and interest (including all Intellectual Property Rights) in Mater Inputs;
- (i) must act reasonably in exercising all of its rights under the Contract;
- (j) must cooperate with Mater's Personnel and other suppliers to Mater who provide goods and services relating to the Goods and/or Services;
- (k) must create and maintain records of its performance of this Contract in accordance with usual industry practice for provision of goods and services similar to the Goods and/or Services. The Supplier will give Mater reasonable access to records on written request;
- (l) must at its cost, take out and maintain the insurances described in the Contract with an insurer authorised and licensed to operate in Australia, on reasonable commercial terms. The Supplier must promptly notify Mater if any policy is cancelled or there is any significant change in any of those policies. The Supplier must maintain run-off insurance for a minimum period of 6 years after the Contract ends, for all insurance policies which are maintained on a "Claims made" basis. The Supplier must provide proof of insurance for each policy ; The proof of insurance documents listed must be issued by the Supplier's insurer (or authorised underwriting agent) and must include the following minimum details:
 - (i) Insurer's name (must be held with an authorised and licenced Australian insurer or an insurer with a security rating of A- or better from AM Best, or an equivalent ratings organisation)
 - (ii) Policy Holder/Insured's name
 - (iii) Policy Number
 - (iv) Type of insurance policy e.g. Products Liability insurance
 - (v) Period of insurance
 - (vi) *Business description/activities*
 - (vii) Insurance excess (also known as a deductible)
 - (viii) Limits of indemnity/liability
 - (ix) List of Endorsements/exclusion
 - (x) Territorial limit; and

- (xi) Jurisdictional limit.
- (m) must obtain and maintain the authorisations described in the Contract and any other licences, permits, permissions and authorities necessary for the Supplier to perform the Contract. The Supplier must provide evidence of compliance with this clause if requested by Mater;
- (n) must provide reports as and when reasonably requested by Mater;
- (o) warrants that it has the necessary skills and expertise to properly perform the Contract, and all its Personnel performing duties in relation to this Contract are competent and have the necessary skills and expertise to properly perform the duties allocated to them concerning this Contract; and
- (p) on reasonable prior written notice from Mater, must give Mater reasonable access to the Supplier's premises where the Goods and/or Services are being performed or produced, documentation, records and Personnel, to enable Mater to verify that the Supplier is complying with its obligations under the Contract, and will promptly address any non-compliances identified by Mater and notified to the Supplier.

5. Terms and conditions specific to Goods

The following terms and conditions apply to the supply of Goods:

- (a) all Goods must be new, unused and of recent origin;
- (b) the Supplier must inspect and test all Goods that will be delivered in a material form to ensure that they comply with the Requirements, before delivery;
- (c) the Supplier must assign any manufacturer's warranty to Mater, where possible to do so, and must inform Mater where it is not possible to do so;
- (d) the Supplier must deliver the Goods to the Site, in accordance with Mater's instructions;
- (e) acceptance of the Goods by Mater does not relieve the Supplier of any of its obligations under the Contract;
- (f) despite clause 10 ('Invoicing and Payment'), Mater is not obliged to pay the Supplier for any part of the Goods until:
 - (i) the Supplier has delivered to Mater any Goods that are due to be delivered; and
 - (ii) Mater has certified that the Goods specified in the correctly rendered tax invoice have been supplied and/or performed in accordance with Contract;
- (g) the Supplier must adequately pack and protect Goods to withstand transit and storage, and provide a packing note with the Goods;
- (h) if Mater rejects Goods for non-conformity with the Contract, and the Supplier does not repossess the rejected Goods within 30 days of notice of rejection, Mater may sell or dispose of the Goods, at the Mater's cost. Mater is under no obligation to pay for rejected Goods and the Supplier will promptly refund any amounts pre-paid for rejected Goods within 10 Business Days of Mater's rejection;
- (i) risk in Goods which are provided in a material form will transfer to Mater when delivered to the delivery address set out in the Contract in accordance with Mater's delivery instructions;
- (j) title in Goods which are provided in a material form will transfer on the earlier of the delivery or payment of the applicable Price;
- (k) the Supplier will provide with the Goods any information, data or manuals required for Mater to use, maintain, repair, install or operate the Goods.

- (l) the Supplier warrants that the Goods will not be subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of Law that cannot be excluded by contract;
- (m) the Supplier warrants that where the Good is a Medical Device, that the Goods have been tested and are certified as being tested in accordance with the current Australian Standard 3551 or equivalent and will manage the Medical Device in accordance with the regulations set by the Therapeutic Goods Administration.

7. Subcontracting

The Supplier may only subcontract its obligations under this Contract to subcontractors identified in the Contract or with Mater's prior written consent. Mater will not unreasonably withhold consent but may give consent subject to reasonable conditions.

8 Personnel

In providing the Services the Supplier must:

- (a) ensure that its Personnel comply with all the obligations of the Supplier under this Contract, and the Supplier is fully responsible for all acts and omissions of its Personnel, as though they were acts or omissions of the Supplier;
- (b) Not purport to be, and the Supplier Personnel are not, employees of Mater;
- (c) if Mater reasonably requests, the Supplier will promptly remove from Mater premises and/or the performance of this Contract, any Personnel used in performance of the Contract, and replace them with other Personnel acceptable to Mater, at no additional cost to Mater;
- (d) ensure that any replacement Personnel have equivalent or superior skills, qualifications and experience, and promptly provide information reasonably requested about any Personnel or proposed replacement Personnel, including the curriculum vitae for each relevant individual. Mater may reject any proposed replacement Personnel, in which case the Supplier must promptly propose an alternative;
- (e) ensure 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.

9. Price

- (a) The Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST.
- (b) Mater will not reimburse any travel or accommodation expenses except where:
 - (i) Mater requests that the Supplier travel away from the agreed service location;
 - (ii) Mater has approved the expenses in writing before they are incurred; and
 - (iii) the Supplier provides satisfactory evidence of payment.
- (c) The Supplier may review the Prices in accordance with any Price review mechanism in the Contract. No other Price change or new Price will be effective unless Mater agrees in writing.

10. Invoicing and payment

- (a) The Supplier may invoice Mater at the times and, where applicable, in the amounts set out in the Contract.
- (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 and ACN number at the top;
 - (iii) Reference number/invoice number;
 - (iv) Date in DDMMYYYY format;
 - (v) Mater Misericordiae Limited ABN 83 096 708 922, or as listed on 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) Mater is not required to pay any invoice that does not comply with this clause.
- (d) Unless expressly stated otherwise in the Contract the Supplier may not:
- (i) invoice Mater (and Mater is not required to pay) for Goods and/or Services until the relevant Goods and/or Services have been provided, and meet the Requirements; or
 - (ii) charge or pass through any fees, costs or charges associated with a payment method.
- (e) Mater will pay each correctly rendered tax invoice within 30 days of receipt, or as required under Law.
- (f) Mater may set off any amounts payable by the Supplier to Mater against amounts payable to the Supplier by Mater.
- (g) Mater may withhold payment of any amount which it disputes in good faith, until the dispute is resolved and it is determined that the amount is payable.

11. GST

If GST is payable on any Goods or Services made under this Contract, Mater will pay to the Supplier an amount equal to the GST. The Supplier must deliver a tax invoice to Mater before the Supplier is entitled to payment of an amount under clause 10. Mater can withhold payment of the amount until the Supplier provides a correctly rendered tax invoice.

12. Liability

The Parties agree that:

- (a) neither party will be liable to the other, (whether in contract, tort including negligence or otherwise) in connection with the Contract, for loss or damage to the extent that the other party contributed to the loss or damage.
- (b) the party who suffers loss or damage must mitigate its loss. The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.
- (c) despite any other condition of the Contract, the Supplier's liability under the Contract is limited to the extent necessary to comply with a scheme that is in force and applies to the Supplier under the *Professional Standards Act 2004 (Qld)* as specified in the Contract.

13. Indemnity

The Supplier releases, discharges and indemnifies Mater and its Personnel from and against any Loss and or Claim that may be brought against or made upon or incurred by any of them (whether in contract, tort including negligence, or otherwise) in connection with any:

- (a) failure to comply with applicable Law by the Supplier or its Personnel;
- (b) Wilful Default or Wilful Misconduct;
- (c) claim of Intellectual Property Rights or Moral Rights infringement relating to this Contract or the Goods and/or Services;
- (d) claim related to any Cyber Incident or Cyber Act;
- (e) breach of any warranty given in this Contract; or
- (f) any Claim by a third party relating to this Contract, except to the extent that Mater or its Personnel caused or contributed to the Claim.

14. Intellectual Property Rights

14.1 Existing Intellectual Property Rights

- (a) Each party retains all its Intellectual Property Rights which existed at the Contract start date, or which are developed independently of the Contract.
- (b) The Supplier grants (and must procure that relevant third parties grant) Mater an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, transferable and sublicensable licence to exercise all such Intellectual Property Rights which are incorporated into any Goods and/or Services provided to Mater under the Contract, for any purpose of Mater, as part of those Goods and/or Services and future development of those Goods and/or Services.

14.2 New Intellectual Property Rights

- (a) This clause 14.2(a) applies where the parties agree Mater will own the Intellectual Property Rights created or developed in performing the Contract. Subject to clause 15 ("Mater Data"), Mater grants the Supplier an irrevocable, unconditional, perpetual, royalty-free, non-exclusive licensable licence to exercise all such newly developed Intellectual Property Rights, for any purpose of performance of this Contract, subject to the Supplier complying with its obligations in relation to Confidential Information, Personal Information and Mater Data.
- (b) This clause 14.2(b) applies where the parties agree the Supplier will own the Intellectual Property Rights created or developed in performing the Contract. The Supplier grants Mater an irrevocable, unconditional, perpetual, royalty-free, non-exclusive, worldwide, transferable and sublicensable licence to exercise all such newly developed Intellectual Property Rights, for any purpose of Mater, as part of those Goods and/or Services and future development of those Goods and/or Services, in the course of Mater's functions or activities and for such other purposes as agreed between the parties.

14.3 Warranty of authorisation

The Supplier warrants:

- (a) that it is authorised to grant the rights in this clause 14; and
- (b) that the Goods and/or Services the subject matter of this Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

15. Mater Data

- (a) The ownership of Mater Data, including any Intellectual Property Rights in Mater Data, will vest in Mater on creation. The Supplier has no right, title or interest in Mater Data except as specified in this clause. The Supplier must not use, access, modify or disclose Mater Data to any person except to its Personnel on a need-to-know basis to perform the Contract and in accordance with all Laws.
- (b) The Supplier must comply with clause 18 (Privacy) and all applicable Laws in relation to Mater Data which is Personal Information. The Supplier must provide reasonable assistance to Mater on request to enable

Mater to comply with laws, policies and standards applicable to Mater in relation to Mater Data including (without limitation) identification, labelling, searching, reporting, copying, retrieval and modification of Mater Data in relation to Personal Information, public records, right to information and information standards.

16. Cybersecurity

- (a) The 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);
 - (ii) where the Goods or Services contain software, firmware, or chipsets:
 - (A) implement appropriate standards, processes and methods to prevent, identify, evaluate and repair any vulnerabilities, malicious code, and security incidents in the Products and Services which will be consistent with good industry practice and standards such as ISO/IEC 27001 or IEC 62443 (to the extent applicable);
 - (B) support and provide services to repair, update, upgrade and maintain Products and Services including the provision of patches to the Mater remedying vulnerabilities for the reasonable lifetime of the Goods and Services;
 - (C) provide a bill of materials identifying all third-party software components contained in the Goods. Third-party software will be up-to-date at the time of delivery to Mater;
 - (D) grant the right, but Mater will not be obliged, to test or have tested products for malicious code and vulnerabilities at any time, and will adequately support Mater; and
 - (E) provide a contact for all information security related issues;
 - (iii) promptly report to Mater all relevant Cyber Act and/or Cyber Incident, occurred or suspected, and vulnerabilities discovered in any Supplier Operations, Products and Services, if and to the extent Mater is or is likely to be affected;
 - (iv) take appropriate measures to achieve that its Subcontractors and Suppliers will, within a reasonable time, be bound by obligations similar to the provisions of this clause; and
 - (v) 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.

17. Confidentiality

- (a) Each party will keep confidential all Confidential Information which it obtains from the Discloser, or creates in relation to the Contract, and will not use it except for the purposes of the Contract, and not disclose it except to its Personnel on a need to know basis for the purpose of performing its obligations under the Contract, or with the Discloser's consent, or to the extent required by Law.
- (b) Where the Recipient discloses the Confidential Information to a third party as permitted under this Contract, the Recipient must inform the third party of the confidential nature of the Confidential Information and will be responsible for all use and disclosure of the

Confidential Information by the Recipient's Personnel and professional advisors.

- (c) If Mater requests, the Supplier must obtain from its Personnel a signed confidentiality deed in a form acceptable to Mater.
- (d) The Supplier must not make any public announcements or advertisement relating to the Contract except where Mater has approved the proposed announcement or advertisement in writing.
- (e) If requested by Mater, on termination or expiry of the Contract, the Supplier must promptly return or destroy (at Mater's option) all Mater Data, Confidential Information and Personal Information of the Mater, and will confirm to the Mater in writing when this has been done.
- (f) The Supplier may retain a copy of any Confidential Information of Mater to the extent required by Law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.

18. Privacy

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.

19. Anti-competitive conduct, Slavery, and criminal organisations

19.1 Anti-competitive conduct

The Supplier warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the Contract, and the associated RFQ Process.

19.2 Modern Slavery

The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its supply chain, have not been convicted of any offence involving Modern Slavery.

20. Termination

20.1 For cause – by Mater

Mater may terminate the Contract immediately on written notice if:

- (a) Mater is satisfied that any of the declarations and warranties provided by the Supplier were inaccurate, incomplete, out-of-date or misleading in any way when made, or become inaccurate, incomplete, out-of-date or misleading in any way or the Supplier's actions constitutes Wilful Misconduct or Wilful Default;
- (b) the Supplier ceases business or indicates that it is unable or unwilling to complete the Contract;
- (c) the Supplier breaches the Contract and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within a reasonable period nominated by Mater; or
- (d) the Supplier is or becomes insolvent.

If Mater terminates under this clause 20.1, the Supplier will pay or reimburse Mater's reasonable costs of obtaining replacement Goods and/or reperformance of Services or arranging for another supplier to complete the Contract.

20.2 For cause – by Supplier

- (a) The Supplier may terminate the Contract immediately on written notice only if Mater has not paid any amount which is undisputed and properly payable, the Supplier has notified Mater of the outstanding amount stating that it will terminate the Contract if Mater does not pay such amount within a reasonable time set out in the notice, and the reasonable time expires without Mater disputing the amount or making payment.

20.3 For convenience

- (a) Either Party may terminate the Contract in whole or part at its absolute discretion by giving at least 30 days' written notice.
- (b) The Parties will comply with any reasonable directions given in the notice in connection with the termination.
- (c) If Mater terminates the Contract under clause 20.3(a), Mater will pay the Supplier for the work performed and Goods and/or Services supplied in accordance with the Contract but not yet invoiced, substantiated to the reasonable satisfaction of Mater.

20.4 Suspension

- (a) In addition to Mater's termination rights, the Mater may suspend the Contract immediately on written notice:
 - (i) in its absolute discretion; or
 - (ii) in any circumstances when it is entitled to terminate under this clause 20.1, if:
 - (A) Mater has issued a notice of the breach to the Supplier; and
 - (B) if the breach described in clause 20.1 was capable of being remedied, the Supplier has not remedied the breach within 30 days (or such longer period stated in the notice in writing).
- (b) Mater may end the suspension on written notice. The Supplier will promptly re-commence performance after receiving Mater's notice ending the suspension.
- (c) If Mater suspends the Contract for any reason which is not due to the act, default or omission of the Supplier, Mater will pay the Supplier's reasonable and documented expenses directly resulting from the suspension. Mater will have no other liability to the Supplier relating to the suspension. The Supplier must take reasonable steps to minimise its expenses relating to the suspension.
- (d) If Mater suspends the Contract for a contract breach, default or omission of the Supplier, the Supplier will pay Mater's reasonable and documented expenses directly resulting from the suspension.

20.5 Consequences

Termination or suspension of the Contract will not affect the accrued rights and remedies of the parties prior to termination or suspension.

21. Assignment

- (a) The Parties may not assign, transfer or novate any of its rights or obligations under the Contract without the other Party's prior written consent.
- (b) Both Parties will act reasonably in considering a request by the other party to assign, transfer or novate the Contract.

22. Notices

- (a) A notice will be deemed to be given:
 - (i) if posted – two (2) Business Days after the date of posting;
 - (ii) if delivered by hand during a Business Day – on the date of delivery;
 - (iii) if emailed – subject to clause (d) below, on the date recorded on the device form which the party

sent the email, unless the sending party receives an automated message that the email has not been delivered,

- (iv) except that a delivery by hand or email received after 5:00pm (local time of receiving party) will be deemed to be given on the next Business Day.
- (b) A notice of suspension or termination of a Contract which is sent via email must also be sent by post or hand delivery and will not be deemed to be given until the notice is deemed to be delivered by post or hand delivery.

23. General

The Parties agree that:

- (a) (**act reasonably**) they will act reasonably in exercising all of its rights under the Contract;
- (b) (**communication**) they will direct all enquiries relating to the Contract to the other party's nominated contact person in the Contract, or to another person if the other party directs;
- (c) (**notices**) they will send all notices relating to the Contract to the other party at the address listed in the Contract, with a copy to the nominated contact person in the Contract
- (d) (**governing law**) this Contract is governed by and is to be construed in accordance with the laws applicable in Queensland, and that each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Queensland.
- (e) (**variation**) the Contract may only be varied by written agreement of authorised representatives of the parties;
- (f) (**entire agreement**) this Contract sets out all the parties rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Contract. No other terms and conditions will apply, and if any part of this Contract is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract (and any parts of the Contract which are dependent on those parts) will not apply but the other parts of the Contract will not be affected;
- (g) (**waiver**) clauses and rights in this Contract can only be waived in writing signed by the waiving party. Failure or delay of a party in exercising a right under the Contract does not waive the party's rights. A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights, or the same rights in other circumstances;
- (h) (**relationship**) their relationship is of principal and contractor. This Contract does not create any partnership, joint venture or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of Mater;
- (i) (**exclude implied terms**) the *Sale of Goods (Vienna Convention) Act 1986 (Qld)* does not apply, to the extent that the parties are permitted by Law to exclude it.
- (j) (**Survival**) 1.2 ('Hierarchy'), 4(l) ("Insurance"), 10 ("Invoicing and Payment"), 11 ("GST"), 12 ("Liability"), 13 ("Indemnity"), 14 ("Intellectual Property Rights"), 15 ("Mater Data"), 16 ("Cybersecurity"), 17 ("Confidentiality"), 18 ("Privacy"), 23(d), (f), (g), (h), (i) and (j) will survive termination or expiry of the Contract for any reason; and
- (k) (**costs**) each party will bear its own costs in relation to the preparation, negotiation and execution of the Contract and any variations.

B. Definitions

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

Claim includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, including those arising out of the terms of any settlement.

Closing Date and Time means the date and time stated in the Request for Quote or such later time as may be notified by Mater.

Confidential Information means all information disclosed by or on behalf of Mater, or the Supplier ("**Discloser**") to the other party ("**Recipient**") in connection with 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 Mater) all Mater 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.

Conflict of Interest means having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the ability of the Supplier to perform its obligations under the Contract fairly and objectively.

Conforming Offer means an Offer by the Supplier, which includes all the information requested, is received by the Closing Date and Time, and meets all other requirements for Offers set out in the Request for Quote.

Contract means an agreement between Mater and the successful Supplier.

Correctly Rendered Invoice means a tax invoice as defined by A New Tax system (Goods and Services Tax) Act 1999(Cth); which detailed the amount due based on the cost detailed in this Contract.

Mater Data means any metadata, information, materials, data, datasets or databases to the extent provided by or on behalf of Mater or to the extent created, processed, produced or derived by or on behalf of the Supplier using that information, materials, data, datasets or databases.

Mater Inputs means Mater's Personnel, equipment, premises, documents, access and any other resources that Mater will provide or make available to the Supplier using that information, materials, data, datasets or databases.

Cyber Loss means any loss, damage, liability, claim, cost or expense of any nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing or remediating any Cyber Act or Cyber Incident.

Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any IT System.

Cyber Incident means:

- (a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any IT System; or

- (b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any IT System.

Data means metadata, 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 an IT System.

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.

Intellectual Property Rights includes all copyright, trade mark, design, patents, semiconductor or circuit, layout rights, plant breeder's rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Invitation to Offer, Request for Quote or Contract, but excludes Moral Rights.

Invitation Process means the process commenced by the issuing of a request for quote, or any other process by which Mater seeks an offer for the supply of goods and/or services and concluding upon formal announcement by Mater of the selection of a preferred supplier or upon the termination of the process.

Personnel means the people identified in RFQ as 'Personnel'.

Laws means all:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of Queensland;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Goods and/or Services;
- (c) the requirements of any authority with jurisdiction in respect of the Goods and/or Services and/or the Site, as applicable; and
- (d) fees and charges payable in connection with the foregoing.

Loss means any and all liabilities, losses, damages, fees, fines, penalties, costs, and expenses, (including reasonable professional advisory and legal counsel fees) of every nature and character.

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*.

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.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of the Request for Quote or Contract (as applicable).

Offer means an offer submitted by a Supplier in response to a Request for Quote including subsequent clarifications and modifications.

Offer Validity Period means the period in which the Offer remains open for acceptance by Mater.

Personal Information has the meaning given:

- (a) for the purpose of the *Information Privacy Act 2009* (Qld), – in that Act; or
- (b) for the purposes of the *Privacy Act 1988* (Cth)– in that Act.

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

Price means the price or prices described in a Contract or calculated using a calculation method specified in the Requirements or otherwise agreed by the parties in writing.

Request for Quote (RFQ) means the request for quote issued by a Mater which includes the Request for Quote Contract Conditions.

Requirements means the standards, specifications and other requirements for the Goods and/or Services and the performance of the Supplier's other obligations under the Contract, which are set out in the Contract, the Request for Quote, or otherwise agreed by the parties in writing.

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

Site means the site or premises at which the Goods and/or Services are to be provided as specified by Mater.

Supplier a Contract is described in the Contract or documents that form the Contract.

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

Wilful Default means fraud, fraudulent concealment, dishonesty, or any illegal or malicious act or omission in relation to the Contract by a party or its Personnel.

Wilful Misconduct means an intentional breach of either a material provision of the Contract or of a Law in respect of the Supplier's obligations under the Contract, committed with reckless disregard for the consequences and in circumstances where the Supplier knows or ought to know that those consequences would likely result from the breach, and which is not due to an honest mistake, oversight, error of judgement, accident or negligence.

C. Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

- (a) **(agreement)** a reference to an agreement includes any variation or replacement of the agreement;
- (b) **(Business Day)** if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- (c) **(consistency)** where a Request for Quote or Contract is made up of more than one document, the Request for Quote or Contract must be read in a way that minimises inconsistency, ambiguity or discrepancy;
- (d) **(contract departures)** the contract departures as agreed in writing between Mater and Supplier will take precedence over other documents.
- (e) **(currency)** all currency amounts are in Australian dollars;

- (f) **((headings))** headings are provided for convenience and do not affect the interpretation of the Request for Quote or documents making up a Contract;
- (g) **(includes)** "include", "includes" and "including" must be read as if followed by the words "without limitation";
- (h) **(joint and several)** agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (i) **(governing law)** the laws of Queensland apply to a Contract, SOA and any Invitation Process. Each party submits to the jurisdiction of the courts of Queensland;
- (j) **(Law)** a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct, and includes any consolidation, amendment, re-enactment or replacement of a law;
- (k) **(person)** a person includes the person's executors, administrators, novatees and assignees;
- (l) **(construction)** no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it.