

Terms and conditions

1. Agreement

- (a) The Agreement consists of the following documents:
 - (i) the purchase order (**Order**) placed with the Contractor (**you, your**);
 - (ii) these Terms and Conditions (**Terms**); and
 - (iii) any express written agreement from IRT (**us, we, our**) signed by one of our directors or authorised senior officers which is attached to, or incorporated by reference in, the Purchase Order or these Terms.
- (b) This Agreement is of no effect until an Order is placed by us (and you have accepted in accordance with these Terms) and then only applies to the Goods or Services specifically covered by that Order.

2. Precedence of documents

If and to the extent of any conflict or inconsistency between a provision of these Terms and a provision of another document of the Agreement (referred to in clause 1(a)), the documents must be construed in accordance with the following order of priority with the document listed first having the highest priority: (1) any express written agreement from us; (2) our Purchase Order; (3) these Terms.

3. Provision of Goods and Services

- (a) We only purchase goods or services (**Goods or Services**) on these Terms. Except as provided in clause 3(b), if you accept our Order it will be on these Terms, regardless of any inconsistency with your terms and conditions (if any).
- (b) These Terms are available from us on request and are posted electronically through our Procurement and Finance systems.
- (c) These Terms can only be changed, or other terms agreed, in written correspondence signed by one of our directors or authorised senior officers.
- (d) You acknowledge and agree that we have not made any warranty or representation to you that we will place any number of Orders for Goods or Services with you.
- (e) An Order will be deemed accepted by you if you:
 - (i) notify us that you accept the Order; or
 - (ii) supply Goods or Services in accordance with the Order;
 - (iii) perform any part of the Agreement.
 - (iv) You agree to provide us with the Goods or Services specified in the Order.
- (f) You are required to comply with our reasonable directions in relation to the supply of Goods or Services.
- (g) We may cancel all or part of any Order at any time by giving notice to you. In the case that we cancel an Order, you must cease production in relation to the Order immediately and we will reimburse you for only direct costs already legitimately incurred by you in relation to Goods or Services provided under the relevant Order.
- (h) In providing the Goods or Services, you must:
 - (i) deliver the Goods or provide the Services at the location and time specified in the Order;
 - (ii) not interfere with our activities or the activities of any other person at the place of delivery;
 - (iii) comply with all specifications set out in these Terms;
 - (iv) not engage any subcontractor to provide any of the Services;
 - (v) ensure your employees, officers and agents comply with the terms of this Agreement; and
 - (vi) comply with all applicable laws and provide any notices and information requested by us to confirm your compliance with this requirement.

4. Supply of Goods - Delivery, Title and Risk

- (a) All Goods must be suitably packed and correctly addressed in accordance with the Order to ensure that they arrive in a good state and condition.
- (b) Each delivery must be accompanied by a delivery docket. The delivery docket must detail the following; order number, item number, units of measure and quantity delivered.
- (c) Full unencumbered title to each Good will pass to us on the earlier of:
 - (i) us making payment in full to you for that Good; or
 - (ii) the Goods being delivered to the delivery location and accepted by us.
- (d) Risk in the Goods passes to us upon our acceptance of the Goods.
- (e) IRT reserves the right to:
 - (i) in the case of Goods, inspect and test any Goods during manufacture and/or prior to delivery; or
 - (ii) in the case of Services, supervise, inspect or test the Services during the performance of the Services.
- (f) Goods will be taken to have been accepted by us on the earlier of the following:
 - (i) the date on which we successfully use the Goods for their intended purpose; or
 - (ii) the date which is 14 days after the date on which the Goods was delivered to us provided that we have not rejected the Goods pursuant to clause 5 on or before that date.

5. Return, replacement and rectification

If Goods or Services do not comply with the specifications set out in the relevant Order or are found to be defective at any time (including after acceptance by us), you must, at our election and at your own cost, repair or replace the Goods within 7 days of us requesting you to do so. If you do not comply with our request, we can terminate this Agreement immediately in accordance with clause 11(b)(i).

6. Fee

- (a) Subject to compliance with this Agreement, in consideration of the provision of the Goods or Services in accordance with an Order, we will pay you the fee specified in the Order (**Fee**) within 30 days after the receipt of a valid tax invoice, except where we dispute the invoice.
- (b) The Fee is inclusive of all costs and applicable taxes relating to the supply of Goods or Services, including GST and all charges for packing, insurance and delivery.
- (c) We will not be liable to pay you all or any part of the Fee until:
 - (i) you have provided us with an invoice for the Fee including the Order number, Item Number, description, unit price, GST component, total invoice price, units of measure, quantity and delivery location; and
 - (ii) you have supplied the Goods or Services in accordance with this Agreement.

7. Warranties

- (a) You undertake and warrant that all Goods supplied to us will:
 - (i) conform with all specifications set out in the Order;
 - (ii) be suitable for installation and/or use by us;
 - (iii) be of good merchantable quality, fit for purpose and free from defects;



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- (iv) carry a warranty period of not less than 24 months for Services, and the greater of 12 months or the manufacturer of the Good's warranty; and
 - (v) agree that warranties in respect of Goods may be assigned by us to our customers and that you will act with good faith to respond to all warranty claims.
- (b) You undertake and warrant that all Services performed will:
- (i) conform with all specifications set out in the Order;
 - (ii) be performed by personnel suitably qualified and experienced to perform the work required and with the standard of professional care and skill customary for the supply of such services; and
 - (iii) in situations involving supervised or unsupervised access to our aged care recipients where police checks are required by law, be performed by persons from who you have obtained current police certificates that do not preclude them from working in aged care.
- (c) You undertake and warrant that you have conducted all relevant checks (including police checks) for the employment or engagement of staff, contractors or volunteers involved in providing the Goods or Services.
- (d) You undertake and warrant, to the extent it is relevant to the provision of the Goods or Services, that the Goods or Services will comply with, and will not compromise our compliance with, the Accreditation Standards detailed in the Commonwealth Quality of Care Principles 2014, as amended from time to time.
- (e) You warrant that in relation to any supplier of the Goods, you have taken steps to ensure that the supplier is reputable and that the supplier warrants that the Goods are of merchantable quality and carry any applicable manufacturer's warranty which passes to us and any other buyer or customer without liability to us.
- (f) This clause survives the termination of this Agreement.

8. Workplace Health and Safety

- (a) Without limiting your other obligations, you must and must ensure that your personnel, in delivering the Goods or carrying out the Services:
- (i) comply with all laws for workplace health and safety arising out of or in connection with your duties under these terms;
 - (ii) comply with our workplace health and safety management system requirements;
 - (iii) report, investigate and apply remedial action in accordance with our hazard and incident reporting procedures;
 - (iv) immediately report to us any personal injury or death or property damage arising from your delivery Goods or Services to us.
- (b) Without limiting our rights under any other provision, we may:
- (i) audit you to review your compliance with the obligations under clause 8(a);
 - (ii) order you to suspend delivery of Goods or Services in the event of an actual or suspected breach of the obligations under clause 8(a) or your failure to follow our reasonable directions.

9. Provision of Services - Intellectual Property Rights

- (a) Intellectual Property Rights means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in or in relation to copyright, trademarks, designs, patents, business and domain names, inventions, trade secrets, know-how and other results of intellectual activity in the industrial, commercial, scientific,

literary or artistic field whether or not registrable, registered or patentable. These rights include:

- (i) all rights in all applications to register these rights; and
 - (ii) all renewals and extensions of these rights.
- (b) You acknowledge and agree that we are the owner of all Intellectual Property Rights in all materials created in relation to the provision of Services, whether in written, electronic or other forms (Materials) and that those Intellectual Property Rights remain our sole and exclusive property.
- (c) This clause survives the termination of this Agreement.

10. Confidentiality

- (a) Confidential Information means confidential information of a party and includes information whether verbal, written or in some other form, including electronic form, relating to:
- (i) knowledge or information regarding the business transactions, affairs, clients, residents, suppliers property, policies, procedures or activities of a party;
 - (ii) any document which is marked confidential; and
 - (iii) any document or information which a party advises the other party is confidential.
- (b) A party must not disclose to any person any Confidential Information of the other party for any purpose other than to perform its obligations under this Agreement, except as required by law, court order or any governmental or regulatory authority.
- (c) This clause survives the expiration or termination of this Agreement.
- (d) This clause survives the termination of this Agreement.

11. Termination

- (a) We may terminate this Agreement at any time by providing you with 14 days' prior written notice.
- (b) We may terminate this Agreement immediately by notice if:
- (i) you breach a provision of this Agreement and you do not rectify the breach to our satisfaction within 7 days of us serving you with a notice requesting rectification; or
 - (ii) you fail to report an issue in accordance with our hazard and safety incident reporting procedures; or
 - (iii) you fail to comply with a lawful direction provided by us; or
 - (iv) you breach a provision of this Agreement and we form the view (acting reasonably) that such a breach is not capable of being remedied; or
 - (v) you are the subject of an insolvency event, which includes without limitation, making a voluntary arrangement with your creditors, becoming bankrupt, becoming subject to an administration order or going into liquidation, a third party taking possession or enforcing rights over any of your property or assets under any form of security, ceasing to or threatening to cease business.
- (c) We are only liable to pay to you the Fee (if any) in relation to the Goods or Services you have supplied and which have been accepted by us up to the date of termination.
- (d) You must return to us any part of the Fee which has been overpaid or for which Goods or Services have not been delivered and accepted in accordance with this Agreement



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(including for termination by us for non-compliance by you with clause 5).

- (e) This clause survives the expiry or termination of this Agreement.

12. Insurance

- (a) You must maintain workers compensation insurance as required by law.
- (b) You must also maintain public liability and product liability insurances for an amount not less than \$10,000,000 for any one occurrence.
- (c) Where the Order involves the provision of Services, you must also maintain professional indemnity insurance for an amount not less than \$2,000,000 per claim, including run off cover for a period of 7 years following completion of the Services.
- (d) You must provide us with certificates of currency in relation to these insurances at the commencement of this Agreement and whenever the insurances are renewed or requested by us.
- (e) Clauses 12(c) to (e) survives the expiry or termination of this Agreement.

13. Indemnity

- (a) You indemnify us and our personnel from and against all claims, proceeding, litigation, investigation, loss, damage, cost, or expense judgment, or damage which we may pay, sustain or incur arising from any injury to any person (including death) or any damage to any property (including any infringement of third party Intellectual Property Rights), where such injury or damage was caused by any act or omission by you or your personnel in connection with the performance or non-performance of your obligations under this Agreement.
- (b) This clause survives the expiry or termination of this Agreement.

14. Disputes

- (a) Disputes will as far as possible, be resolved by the parties undertaking negotiation in good faith.
- (b) This clause does not prohibit a party seeking urgent interlocutory relief.

15. General

- (a) This Agreement constitutes the entire agreement between the parties and extinguish all previous drafts, agreements, arrangements and understandings, whether written or oral, including your standard terms and conditions unless otherwise agreed by us in writing.
- (b) You must not assign your rights and obligations under this Agreement without our prior written consent, which may be withheld in our absolute discretion.
- (c) The relationship between the parties is that of independent contractors and not of employer and employee, partners, joint venturers, fiduciaries or principal and agent
- (d) This Agreement is governed by the law of New South Wales.