



Standard Terms and Conditions

1. Contract

1.1 Subject to clause 1.2, by accepting a written or verbal order for goods or services placed by IRT (**Order**), or supplying Goods or Services, the supplier of the Goods or Services (**Supplier**) agrees that:

- (a) a binding agreement between IRT and the Supplier is created which comprises these Terms and Conditions and the Order (**Contract**); and
- (b) these Terms and Conditions will prevail over, and apply to the exclusion of, any other terms and conditions, whether or not notified to IRT.

1.2 Notwithstanding clause 1.1, if the Supplier has a formal written agreement duly executed by an authorised representative of IRT, these Terms and Conditions will apply in conjunction with that agreement and the terms of that agreement will prevail to the extent of any conflict.

2. Provision of Goods and Services

2.1 The Supplier must provide all Goods and Services in accordance with the Contract.

2.2 The Supplier must deliver the Goods or perform the Services in accordance with any location, timing and other instructions in the Order. The Supplier must keep IRT informed of any delays or other matters which may affect the delivery of Goods or provision of Services.

2.3 Each delivery of Goods must be accompanied by a delivery advice quoting, as relevant, the Order number, description of the Goods supplied, item ID, part number and quantity delivered. Goods must be suitably packed with the minimum of packaging material so as to ensure the safe delivery, using environmentally friendly packaging material where practicable.

2.4 IRT may, at any time before delivery, change or cancel all or part of the Order by giving the Supplier notice. If, prior to receiving notice from IRT, the Supplier has incurred expense in arranging for the provision of Goods or Services, IRT agrees to reimburse the Supplier for the reasonable and demonstrable direct costs legitimately incurred by the Supplier in relation to the Goods or Services, provided the Supplier mitigates any such costs.

2.5 Risk of loss of or damage to Goods passes to IRT upon delivery unless the Order includes installation of Goods in which case risk of loss of or damage to those Goods passes upon completion of installation. Clear and complete title to Goods, free of any encumbrances, will pass to IRT on the earlier of acceptance of, or payment for, the Goods.

3. Quality

3.1 IRT may:

- (a) on providing reasonable notice to the Supplier, inspect and test any Goods at any time;
- (b) on providing reasonable notice to the Supplier, supervise, inspect or audit the performance of any Services or the results of such Services;

(c) audit the Supplier's compliance with its obligations under the Contract once every 12 months (unless IRT has reasonable reason to believe that there has been a breach of the Contract, in which case IRT may perform an additional audit), on the provision of 14 days' notice to the Supplier including requiring copies of National Police Certificates, licences, registrations, insurances and proof of vaccination;

(d) direct the Supplier to provide any information or cooperation reasonably necessary to prove the Supplier's compliance with its obligations under the Contract, and where such information or cooperation is required to respond to a Government authority, department, agency or regulator, the Supplier must respond within the timeframe determined by the relevant authority, department, agency or regulator; and

(e) direct the Supplier to suspend provision of Goods or Services in the event of an actual or reasonably suspected breach of any obligations under the Contract.

3.2 If the Supplier supplies to IRT Goods or Services which do not comply with the Contract (**Non-Compliant Goods or Services**) then the Supplier and IRT agree as follows:

(a) if the Australian Consumer Law applies to such supply, then the parties shall comply with the Australian Consumer Law, including any remedies available to IRT; and

(b) if the Australian Consumer Law does not apply to such supply, or if there are no remedies available to IRT under the Australian Consumer Law in respect to such supply, then if IRT notifies the Supplier in writing of Non-Compliant Goods or Services within a reasonable time of such Non-Compliant Goods or Services having been delivered, installed or completed (whichever is applicable) then:

(i) if the Non-Compliant Goods or Services can be reasonably repaired, remedied or made good, IRT may require the Supplier to repair, remedy or make good (whichever is applicable) the Non-Compliant Goods or Services within a reasonable time (**Remedy Requirement**);

(ii) if the Non-Compliant Goods or Services are not capable of being repaired, remedied or made good (whichever is applicable), or if the Supplier fails to comply with the Remedy Requirement within a reasonable time, then IRT may notify the Supplier that it rejects the Non-Compliant Goods or Services, in which case:

- (A) the Supplier must, within 14 days of such notification, refund to IRT all payments made by IRT to the Supplier in respect of the rejected Non-Compliant Goods and Services; and
- (B) in the case of the rejected Non-Compliant Goods, remove such Goods from the relevant premises and take them back; and
- (iii) the warranty period in respect to Non-Compliant Goods or Services that are repaired, remedied or made good (whichever is applicable) will commence from the date on which the Goods are delivered or the Services completed following their repair, remedy or make good.

4. Warranties

4.1 The Supplier warrants that:

- (a) all Goods supplied are new and in good condition, are free from defects in design, materials and workmanship, at least of merchantable quality and fit for their intended purposes and the Goods and personnel involved in the provision of the Goods comply with all relevant Standards;
- (b) all Services will be performed to a high standard of professional care and skill by appropriately trained and qualified personnel and the Services and personnel performing the Services comply with all applicable Standards and IRT's reasonable and lawful directions brought to the Supplier's attention prior to the commencement of the Contract or as notified in writing from time to time;
- (c) all Goods may be on-sold, and the warranties in respect of Goods may be assigned, by IRT to its customers; and
- (d) to the best of its knowledge, the Goods, Services and their use and supply will not breach any obligation of confidentiality or infringe any Intellectual Property of any person.

4.2 The Supplier warrants that it has conducted all relevant checks required by law for the employment or engagement of staff, contractors or volunteers involved in providing the Goods or Services. In particular that:

- (a) for each employee or contractor who is reasonably likely to have access to IRT customers when providing Services:
 - (i) the Supplier holds a National Police Certificate which is less than three years old and which does not disclose any conviction for murder

- (ii) or sexual assault or any conviction with a sentence of imprisonment for any other form of assault;
- (ii) where a National Police Certificate discloses any offences, the Supplier has provided those details to IRT;
- (iii) where a person has been a citizen or permanent resident of a country other than Australia, that person has made a statutory declaration that they have never been convicted of murder or sexual assault or convicted of and sentenced to imprisonment for any other form of assault; and
- (iv) the Supplier has searched the Register of Banning Orders and the search does not disclose any banning orders on the register;
- (b) each employee or contractor engaged in ACT holds a valid Working with Vulnerable People registration, unless exempt under the *Working With Vulnerable People (Background Checking) Act 2011*; and
- (c) the Supplier has a robust system in place to ensure that employees and contractors to whom 4.2(a) applies, promptly notify the Supplier if they are:
 - (i) convicted of those offences during the term of their National Police Certificate; or
 - (ii) subject to a banning order on the Register of Banning Orders, and in which case the Supplier must immediately disclose this to IRT.

4.3 Where the Supplier is required to make a disclosure under clause 4.2(a)(ii) or 4.2(c), IRT may direct the Supplier not to permit the relevant person to provide Services, acting reasonably.

4.4 Where the Goods are Food, the Supplier warrants that it:

- (a) complies with the Australia New Zealand Food Standards Code; and
- (b) holds all registrations and licences required by relevant State or Territory food authorities.

4.5 Where the Supplier is the trustee of a trust, the Supplier warrants that under the terms of the trust deed it has full legal capacity and power to enter the Contract and be indemnified out of the assets of the trust for all obligations and liabilities arising under the Contract, and that it has entered into the Contract both in its capacity as trustee and in its personal capacity.

5. Fee

5.1 In return for the provision of Goods or Services, IRT will pay to the Supplier the amount specified in the Order **(Price)**.

5.2 The Supplier may only invoice IRT, and must issue such invoice promptly, after Goods have been delivered (or

- where relevant installed) or Services completed. The Supplier's invoice must claim no more than the Price, identify any Order number provided by IRT, bear a unique invoice number, be a valid tax invoice for GST purposes and be accompanied by documentation substantiating the amount claimed where IRT reasonably requests. Each invoice must relate to only one Order and must be submitted electronically via IRT's Coupa Supplier Portal (CSP).
- 5.3 IRT will pay all correctly rendered and undisputed invoices within 30 days of the invoice date.
- 5.4 If a party (**Proposing Party**) wishes to set-off any amount owed by it to the other party under or in connection with the Contract or any other agreement between the parties:
- (a) the Proposing Party must give notice to the other party of the proposed set-off (**Set-off Proposal**);
 - (b) if the other party disputes the Set-off Proposal it must notify the Proposing Party of the amount in dispute and the reason for the dispute (**Dispute Notice**);
 - (c) if the Proposing Party receives a Dispute Notice, then the parties will use reasonable endeavours to resolve the dispute;
 - (d) if the other party informs the Proposing Party that it does not dispute the Set-off Proposal, then the Proposing Party may proceed to effect the set-off set out in the Set-off Proposal.
- 6. Risk management**
- 6.1 The Supplier must carry out its obligations under the Contract in a way that is safe and without risk to the health of its employees and contractors, IRT's employees, contractors, customers, volunteers and visitors, and any person who may come into contact with the Goods or Services.
- 6.2 Without limiting any other obligation, the Supplier must, and must ensure that its representatives:
- (a) comply with all work health and safety Standards relevant to the delivery of Goods or performance of Services; and
 - (b) report to IRT as soon as reasonably possible any property damage, personal injury or death arising from the provision of Goods or Services.
- 6.3 The Supplier agrees to take reasonable steps to assess and address potential modern slavery risks in its operations and supply chains.
- 7. Intellectual Property**
- 7.1 All Intellectual Property owned by a party prior to the date of the Contract (**Background IP**) remains the property of that party.
- 7.2 All Intellectual Property created in connection with the provision of Services (**Project IP**) will be owned by IRT and, the Supplier:
- (a) assigns all Project IP to IRT; and
 - (b) grants IRT a perpetual, irrevocable, non-exclusive, worldwide, transferrable, paid up, royalty free licence in respect of its Background IP to the extent necessary for IRT to fully exercise its rights in Project IP.
- 7.3 The Supplier must not use any IRT Background IP including brands, logos, trade marks and names without IRT's prior written permission.
- 8. Confidentiality**
- 8.1 Subject to clause 8.2, each party must ensure that all Confidential Information of the other party is kept confidential, safe and secure and not disclose it to any person other than to the extent necessary to perform its obligations under the Contract or to its professional advisers or employees who need to know.
- 8.2 A party is not required to keep Confidential Information confidential:
- (a) to the extent required by law, court order or any governmental or regulatory authority; or
 - (b) where Confidential Information has entered the public domain other than as a result of a breach of the Contract.
- 8.3 On completion of the provision of Goods or Services under the Contract, each party must return or destroy, at the other party's election, the other party's Confidential Information.
- 9. Privacy**
- 9.1 The Supplier agrees that IRT may collect, hold, use and disclose any personal information provided to IRT in accordance with IRT's Privacy Policy available at <https://www.irt.org.au/privacy-policy/>.
- 9.2 The Supplier must not cause or allow anything to be done that may result in IRT breaching its obligations under the *Privacy Act 1988 (Cth)* and must comply at all times with the Australian Privacy Principles and Notifiable Data Breaches scheme as if they apply to the Supplier.
- 9.3 Where the Supplier suspects a data breach may have occurred involving any data held by the Supplier related to the provision of Goods or Services, the Supplier agrees:
- (a) it must notify IRT as soon as reasonably possible;
 - (b) it must provide IRT with all information and assistance it reasonably requires; and
 - (c) in the case of an eligible data breach occurring, IRT is irrevocably authorised to carry out all necessary notifications.
- 9.4 IRT must not cause or allow anything to be done that may result in the Supplier breaching its obligations under the *Privacy Act 1988 (Cth)* and must comply at all times with the Australian Privacy Principles and Notifiable Data Breaches scheme.
- 10. Liability and indemnity**
- 10.1 The Supplier is liable for, and indemnifies IRT, its officers, employees and agents against, all loss, damage, claim, injury or expense sustained or incurred in connection with breach of the Contract by the Supplier.

- 10.2 The Supplier's liability under clause 10.1 will be reduced proportionally to the extent that it is caused or contributed to by IRT, its officers, employees and agents and is limited to:
- (a) where insurance proceeds are available under an insurance policy required to be effected by the Supplier under the Contract (or would have been available had the Supplier complied with its obligations under the Contract to effect such insurance policy), the amount which is paid under that insurance policy, or would have been paid had the Supplier so complied with its obligations under the Contract to effect such insurance policy; and.
 - (b) in all other situations, the total price, fees, charges and any other monies received by the Supplier from IRT under the Contract and/or the supply of Goods of Services by the Supplier to IRT.
- 10.3 IRT is liable for, and indemnifies the Supplier, its officers, employees and agents against, all loss, damage, claim, injury or expense sustained or incurred in connection with breach of the Contract by IRT
- 10.4 IRT's liability under clause 10.3 will be reduced proportionally to the extent that it is caused or contributed to by the Supplier, its officers, employees and agents and is limited to:
- (a) where insurance proceeds are available under an insurance policy required to be effected by IRT under the Contract (or would have been available had IRT complied with its obligations under the Contract to effect such insurance policy), the amount which is paid under that insurance policy, or would have been paid had IRT so complied with its obligations under the Contract to effect such insurance policy; and.
 - (b) in all other situations, the total price, fees, charges and any other monies received by the Supplier from IRT under this Contract and/or the supply of Goods of Services by the Supplier to IRT.
- 10.5 The Supplier agrees that it is wholly responsible for the security of its systems and processes and IRT will not be liable for any loss or damage suffered by the Supplier as a result of a breach of that security or fraud. In particular, where IRT makes a payment in accordance with an invoice which purports to be from the Supplier, and the funds paid by IRT are not received by the Supplier and lost as a result of a breach of the Supplier's security or fraud, IRT will be deemed to have paid that invoice.
- 10.6 The Supplier will provide to IRT, through IRT's Coupa Supplier Portal (CSP), information in respect to the bank account into which IRT should pay the Supplier's invoices. If such information changes, the Supplier should update the information in IRT's Coupa Supplier Portal (CSP) as soon as reasonably possible after it changes. IRT will pay the Supplier's invoices as per the
- bank account information provided by the Supplier through IRT's Coupa Supplier Portal (CSP).
- 11. Insurance**
- 11.1 IRT will, acting reasonably, notify the Supplier (prior to the commencement of the Contract or prior to the supply of Goods and Services by the Supplier, whichever is applicable) which of the following insurances the Supplier must effect and maintain. Where IRT specifies that an insurance applies, the Supplier must hold a current policy with a reputable insurer for an amount not less than the minimum amounts shown:
- (a) workers compensation insurance – an amount necessary to cover any potential liability under statute or at common law;
 - (b) public liability insurance – minimum \$10,000,000 per occurrence;
 - (c) product liability insurance – minimum \$10,000,000 per claim;
 - (d) professional indemnity insurance – minimum \$2,000,000 per claim.
- 12. Termination**
- 12.1 A party may terminate the Contract at any time by giving at least 90 days' written notice to the other party.
- 12.2 As well as IRT's other rights and remedies, IRT may terminate the Contract in whole or part immediately by notice to the Supplier if the Supplier fails to deliver Goods or perform Services by the date required by the Contract.
- 12.3 A party (**terminating party**) may terminate the Contract in whole or part immediately by notice to the other party if:
- (a) the other party breaches a term of the Contract and fails to remedy the breach within 10 business days of the terminating party requesting its remedy;
 - (b) if the other party breaches a term of the Contract and the breach is not capable of remedy; or
 - (c) the other party becomes insolvent (to the extent permitted by law).
- 12.4 If IRT notifies the Supplier after the commencement of the Contract of any material changes to Standards or directions and the Supplier cannot reasonably comply with such material changes to the Standards or directions, then the Supplier may terminate this agreement by providing reasonable notice in writing to IRT.
- 12.5 On termination of the Contract, IRT:
- (a) is only liable to pay the Price (if any) in relation to Goods delivered or Services performed up to the date of termination; and
 - (b) can recover from the Supplier any part of the Price paid for Goods or Services which were not provided.
- 12.6 The expiry or termination of the Contract does not affect any right that has accrued to, or obligation that has arisen in respect of, a party before the expiry or termination. Each party's obligations and rights under

the Contract and any terms which must survive to give effect to those obligations and rights, survive the expiry or termination of the Contract.

13. General

- 13.1 All termination notices must be in writing and delivered to the other party by personal service, post or email in accordance with contact details provided by that party. Notices delivered in person or by email are deemed received at the time of delivery by the sender, posted notices are deemed received on the third business day after posting.
- 13.2 A provision of the Contract or a right created under it may not be waived or varied except in writing signed by the party intended to be bound. A failure of a party to exercise a right arising out of the Contract does not constitute a waiver of that right.
- 13.3 Any provision of the Contract which is or becomes unenforceable, is to be read down to the minimum extent to be enforceable, or if that is not possible, severed from the Contract without affecting the remaining provisions of the Contract.
- 13.4 The Supplier may not assign or novate its rights or obligations under the Contract without IRT's prior written consent which may not be unreasonably withheld.
- 13.5 The Supplier may not subcontract any obligations under the Contract without IRT's prior written consent which may not be unreasonably withheld. Where the Supplier subcontracts any obligation under the Contract, the Supplier remains liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Supplier.
- 13.6 These terms and conditions are not to be construed to IRT's disadvantage merely because IRT prepared them.
- 13.7 The Contract is governed by the laws of New South Wales, Australia. The parties submit to the jurisdiction of the courts of that State.

14. Interpretation

- 14.1 In these terms and conditions, unless the context clearly indicates otherwise:
- (a) **Australian Consumer Law** means The Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.
 - (b) **Confidential Information** means any information in any form which is by its nature confidential or non-public, is designated by a party as confidential at the time of its disclosure, or a party knows or ought to know is confidential and includes any personal information obtained by a party in connection with the Contract.
 - (c) **Food** has the meaning in section 5 of the *Food Standards Australia New Zealand Act 1991 (Cth)*.
 - (d) **Goods** means goods described in an Order.
 - (e) **Intellectual Property** means all present and future rights in or in relation to copyright,

trade marks, designs, patents, know-how, inventions, confidential information and any other results of intellectual activity, whether or not registered or registrable.

- (f) **IRT** means Illawarra Retirement Trust ABN 52 000 726 536.
 - (g) **Register of Banning Orders** means the register mentioned in section 74GI of the Aged Care Quality and Safety Commission Act 2018 (Cth).
 - (h) **Services** means services described in an Order.
 - (i) **Standards** includes all laws, regulations, statutory instruments, principles, codes, standards, licences, certificates, registrations, Australian Standards, Aged Care Quality Standards and IRT policies notified to the Supplier.
- 14.2 In these terms and conditions, unless expressly provided otherwise:
- (a) headings are for convenience only and do not affect interpretation of the Contract;
 - (b) words in the singular include the plural and vice versa;
 - (c) includes, including and similar expressions are not words of limitation;
 - (d) money amounts are stated in Australian currency unless otherwise specified; and
 - (e) a reference to a law includes a modification or replacement of it and subordinate legislation issued under it.