

- 1 General**
- 1.1 These terms and conditions for purchase (**Conditions**) together with any purchase order form (attached or dispatched separately) and any other documents incorporated by reference in that form (**Purchase Order**) and any amendments to any of those documents agreed in writing by Peninsula Health comprise the contract between Peninsula Health and the Supplier (**Contract**).
- 1.2 By accepting the Purchaser Order, delivering the goods or providing the services, the Supplier agrees that this Contract applies to the exclusion of any other terms and conditions including any that are supplied with the goods or services or included on quotations, invoices, delivery notes or other documents.
- 1.3 No additional conditions proposed by the Supplier apply to the provision of the goods and/or services unless agreed in writing by Peninsula Health.
- 1.4 If there is any inconsistency between the Purchase Order and these Conditions, the Purchase Order prevails to the extent of that inconsistency.
- 1.5 In the Contract:
- Encumbrances** means a security interest as defined in section 12 of the *Personal Property Securities Act 2009* (Cth);
- Goods** means the articles, goods, material or parts thereof to be supplied under the Contract;
- Intellectual Property** includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, trade secrets and know how, circuit layouts and all other rights resulting from intellectual activity;
- Peninsula Health** means Peninsula Health, a body incorporated pursuant to the *Health Services Act 1988* (Vic), ABN 52 892 860 159, of 4 Hastings Road, Frankston, Victoria;
- Services** means the services to be performed under the Contract;
- Supplier** means the person named on the Purchase Order who is to supply the goods and/or services to Peninsula Health, and where the Supplier includes more than one person, those persons jointly and severally.
- 1.6 In the Contract, unless the context otherwise requires: words importing one gender include any other gender; words importing the singular include the plural and vice versa; reference to a person includes a body politic, a body corporate and a natural person; and headings are for guidance only and do not affect the interpretation of the clauses they refer to.
- 2 Performance and Delivery**
- 2.1 The delivery of all goods and the performance of all services must be made at the time, place, and in the manner, stated in the Purchase Order.
- 2.2 Peninsula Health may reasonably specify in writing to the Supplier another time, place or manner for delivery or performance, in which case that other time, place or manner applies in place of that stated in the Purchase Order.
- 2.3 Goods must be packed, marked and labelled to ensure their safe delivery and safe handling by Peninsula Health after delivery and, if specific packing, marking or labelling is required under the Purchase Order, comply with those requirements.
- 2.4 All goods delivered must be accompanied by a delivery docket detailing the Purchase order number and the description and quantity of goods.
- 2.5 Any goods must be delivered free from all Encumbrances.
- 2.6 Time is of the essence.
- 3 Quality and Compliance with Requirements**
- 3.1 The Supplier must provide the goods and/or services at a high standard with all due skill, care and diligence.
- 3.2 The Supplier must comply with any requirements relating to the services as stated in the Purchase Order and all goods must conform to any specifications relating to goods as stated in the Purchase Order.
- 3.3 Without limiting clauses 3.1 and 3.2, all goods must be free from defects in materials and workmanship, be of merchantable quality and be fit for their purpose and all services must be free from defects in performance, meet their purpose and be complete.
- 4 Inspection and Acceptance Services**
- 4.1 Peninsula Health may inspect the performance and outcome of the services at any time and for that purpose the Supplier must, at reasonable times, give Peninsula Health's representatives access to the premises at which the services are being performed. If there is a defect in the performance of the services or the services are not complete, Peninsula Health may by notice require the Supplier to remedy the defect, or complete the services, at no additional cost to Peninsula Health. If the services do not meet their purpose or are not in accordance with the Contract, Peninsula Health may by notice require the Supplier to redo the services at no additional cost to Peninsula Health. Where the Supplier fails to remedy a defect in the performance of the services, complete the services, or redo the services, within 14 days after notification by Peninsula Health under this clause, Peninsula Health may perform or have performed the necessary work and recover the cost from the Supplier without prejudice to any other rights or remedies Peninsula Health may have.
- Goods**
- 4.2 Peninsula Health may inspect the goods at any time prior to acceptance and reject any goods found not to be in accordance with the Contract. After acceptance Peninsula Health may reject any goods for any non-conformity with the Contract which could not have been discovered by reasonable inspection before acceptance.
- 4.3 Peninsula Health will not be liable to pay for any rejected goods or for any damage or costs arising from inspection or rejection of goods.
- 4.4 If Peninsula Health rejects any goods, the Supplier must, without prejudice to Peninsula Health's rights otherwise arising under the Contract or the general law, comply with a requirement of Peninsula Health to:
- replace, without cost to Peninsula Health, the rejected goods with goods complying in all respects with the Contract;
 - refund any payment for the rejected goods; or
 - repair the goods, on site or otherwise, to the satisfaction of Peninsula Health;
- and, in the case of (a) or (b), remove the rejected goods at the Supplier's expense.
- 4.5 Without additional cost to Peninsula Health, the Supplier must provide access to premises and all other necessary assistance for Peninsula Health's representatives to inspect the manufacture of the goods.
- 4.6 If Peninsula Health requires the Supplier to submit samples of goods, the Supplier must not proceed to bulk manufacture until Peninsula Health has approved the samples.
- 5 Maintenance and documentation**
- 5.1 All goods must be supplied with full operation instructions in English together with all necessary instructions for routine maintenance and service including electrical circuits, schematic diagrams and service manuals so as to ensure the safe and effective use of the goods. If the goods must be commissioned on site by the Supplier to give effect to their warranty, this must be stated. If the goods being supplied must be installed, the Supplier must provide all necessary details to allow that installation to occur. All goods must be supplied with Material Safety Data Sheets where appropriate.
- 6 Title**
- 6.1 Title in, and risk of loss of or damage to, the goods passes to Peninsula Health on delivery.
- 7 Warranty**
- 7.1 If Peninsula Health gives prompt notice of any defect or omission discovered in goods during any warranty period, the Supplier must correct that defect or omission without delay and at no cost to Peninsula Health.
- 7.2 The Supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.
- 8 Inclusive Price**
- 8.1 Unless otherwise agreed to by Peninsula Health in writing, the price of the goods and/or services includes:
- all taxes (including GST), duties and other imposts for which the Supplier is liable;
 - all insurance costs;
 - freight and handling charges;
 - all amounts payable for the use thereof (whether in the course of manufacture or use of the patents, copyright, registered designs, trademarks and other intellectual property rights); and
 - all charges for supply of the goods or the performance of the services, and no extra charges for testing, inspection, packing, delivery or otherwise is payable.
- 9 Intellectual Property**
- 9.1 All intellectual property created under the Contract and relating to the goods and/or services is from the time of creation, owned by Peninsula Health.
- 9.2 The Supplier must not use, disclose, copy or reproduce that intellectual property except for the purposes of the Contract.
- 9.3 The Supplier must at all times indemnify Peninsula Health, its officers, employees and agents, from and against all loss, damage, costs (including legal costs and expenses on a solicitor/own client basis), compensation and expenses arising out of the infringement or alleged infringement of any intellectual property, by reason of the purchase, possession or use of the goods or the outcomes of the services.

10 Assignment and Subcontracting

- 10.1 The Supplier must not, without the consent in writing of Peninsula Health, assign its rights under the Contract or subcontract any part of the performance of the Contract.

11 Applicable Law

- 11.1 This Contract shall be construed and take effect in accordance with the laws in force for the time being in the State of Victoria.
- 11.2 The Supplier shall ensure that the work done under this Contract complies with the laws from time to time in force in the State of Victoria.

12 Payment

- 12.1 Subject to clause 4.3, Peninsula Health must pay for the goods and/or services no later than the end of the month following :
- title in the goods (if applicable) has passed to it and they have been accepted;
 - satisfactory completion of the services (if applicable); or
 - receipt of a correctly rendered invoice; whichever is the later.
- 12.2 An invoice will be correctly rendered if it:
- is addressed in accordance with the Purchase Order;
 - identifies the Purchase Order;
 - is, where explanation is necessary, accompanied by documentation substantiating the amount claimed; and
 - is where required by Australian law a valid Tax Invoice within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

13 Termination for Insolvency or Breach

- 13.1 Without prejudice to its rights at common law, Peninsula Health may, by notice in writing to the Supplier, terminate the Contract if the Supplier:
- becomes bankrupt or insolvent; being a partnership, becomes dissolved; makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver or receiver and manager appointed; goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction; or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise; or suffers any execution against its assets; or
 - fails: (i) to commence performance of the Contract or to proceed at a rate of progress so as to ensure the due and proper completion of the Contract; or (ii) to take action to remedy a breach of any other obligation under the Contract within 7 days of being given notice by Peninsula Health requiring the Supplier to remedy the breach; or to remedy a breach referred to in this paragraph within 14 days of being given the notice referred to; or
 - assigns its rights otherwise than in accordance with the requirements of the Contract.
- 13.2 Where, before termination of the Contract under clause 13.1, Peninsula Health has made any payment in advance on account of the contract price to the Supplier, the total amount of that payment must be repaid by the Supplier to Peninsula Health on termination and, if not repaid is recoverable by Peninsula Health from the Supplier as a debt.
- 13.3 If the Contract is terminated under this clause:
- the parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
 - rights to recover damages are not affected; and
 - the Supplier must indemnify Peninsula Health in respect of any loss it may incur in purchasing similar goods or services from other suppliers.

14 Termination for Convenience

- 14.1 Peninsula Health may at any time give notice in writing to the Supplier to terminate the Contract or any part without cause.
- 14.2 On receipt of the notice, the Supplier must cease or reduce work as specified in the notice and take all steps possible to mitigate losses.
- 14.3 On termination of the Contract or any part under this clause, the Supplier may submit a claim for compensation and Peninsula Health must pay to the Supplier such sums as are fair and reasonable in respect of the loss or damage sustained by the Supplier in consequence but the Supplier will not be entitled to claim compensation for any work done or expenditure incurred contrary to the Contract or for loss of anticipated profits.
- 14.4 The aggregate of any compensation and any sums paid or due or becoming due to the Supplier under the Contract will not exceed the contract price payable under the Contract.
- 14.5 If this clause is invoked, it will prevail over other inconsistent provisions.

15 Health Purchasing Victoria's Common Use Clause

- 15.1 If Health Purchasing Victoria enters into a contract in respect of the goods or services with the Supplier which may apply to Victorian public hospitals, denominational hospitals, private-operated hospitals and/or metropolitan health

services (as listed in schedules 1, 2, 4 and 5 of the Health Services Act 1988 ("the State wide contract")), then:

- Peninsula Health may give notice to the Supplier that it wishes to purchase the goods or services on the terms and conditions of the State wide contract from a future specified date; and
- this Contract shall end on the date specified by Peninsula Health; and
- the Supplier shall have no claim against Peninsula Health or its agents, employees, officers or servants in respect of this Contract ending or Peninsula Health exercising its rights under this clause.

16 Quality

- 16.1 Upon request by Peninsula Health, the Supplier must provide Peninsula Health and its nominees with all necessary assistance to undertake audits and surveillance in accordance with the National Safety and Quality Health Service Standards (NSQHS Standards) and any other relevant quality standards.

17 Confidentiality

- 17.1 The Supplier must treat, and require its employees, agents and subcontractors to treat, all confidential information of Peninsula Health given in connection with the Contract and identified as having, or marked with, a classification indicating its confidentiality, according to that classification. This clause does not apply to information which is part, or becomes part, of the public domain otherwise than by breach of this clause.

18 Conflict of Interest

- 18.1 The Supplier warrants that no conflicts of interest exists, or is anticipated, relevant to the performance of the obligations under the Contract. If a conflict of that kind arises, the Supplier must notify Peninsula Health immediately. Peninsula Health may decide in its absolute discretion, without limiting its other rights under the Contract, that the Supplier may continue to provide the goods and/or services under the Contract.

19 Freedom of Information Act 1982 (FOI)

- 19.1 Where Peninsula Health has received a Freedom of Information request for access to a document created by or in the possession of the Supplier that relates to the Contract and is required to be provided under the *Freedom of Information Act 1982*, the Supplier must promptly provide the document to Peninsula Health on request, at no cost.

20 Compliance with Peninsula Health's Policies

- 20.1 The Supplier must, when using Peninsula Health's premises or facilities, comply with all reasonable directions of Peninsula Health and all procedures and policies of Peninsula Health relating to occupational health (including no smoking), safety and security in effect at those premises or in regard to those facilities, as notified by Peninsula Health or as might reasonably be inferred from the use to which the premises or facilities are being put.

21 Supplier Code of Conduct

- 21.1 The Supplier acknowledges that it has read and aspires to comply with the Victorian State Government Supplier Code of Conduct.

22 Compliance with Laws

- 22.1 The Supplier must, in carrying out the Contract, comply with all relevant laws and any requirements of relevant authorities (including but not limited to the Therapeutic Goods Administration codes of practice and the National Safety and Quality Health Service Standards (NSQHS Standards)).

23 Indemnity

- 23.1 Subject to the Contract, the Supplier must at all times indemnify Peninsula Health, its officers, employees and agents ("those indemnified") from and against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by a breach of the Contract or any wilful, unlawful or negligent act or omission of the Supplier, its officers, employees, agents or subcontractors in connection with the Contract.

24 Waiver

- 24.1 A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right. A waiver is not effective unless in writing