

# Terms and Conditions

## 1 Providing the Goods and/or Services

- 1.1 The Supplier agrees that CHL may purchase Goods and/or Services similar or identical to those provided by the Supplier from other suppliers.
- 1.2 If the Supplier, or any person working with, for or under the direction of the Supplier, including any sub-contractor (**Personnel**) is reasonably likely to have access to any care recipient of CHL, the Supplier must provide CHL with a satisfactory National Criminal History Record Check (**NCHRC**) as required by law in respect of itself and/or its Personnel prior to commencing provision of the Goods and/or Services. If any NCHRC is unsatisfactory to CHL, CHL may terminate this Order immediately. If, subsequent to a satisfactory NCHRC being received by CHL, the Supplier and/or any Personnel are convicted of murder or sexual assault or are convicted and sentenced to imprisonment for any other form of assault, CHL must be immediately notified and the Supplier and any person convicted must immediately cease supplying the Services to CHL.
- 1.3 If the Supplier or its Personnel will have direct unsupervised contact with any client of CHL who is under 18 years of age for services provided in a 'child related setting' (as defined in the *Child Protection (Working with Children) Act 2012 (NSW)*), then, the Supplier must provide CHL with that information that is required in order for CHL to satisfy itself that the Supplier and/or its Personnel have a **Working with Children Check Clearance**.
- 1.4 The Supplier must ensure that the Supplier and its Personnel:
- are properly qualified and hold all necessary and current registrations, licences and certifications to provide the Goods and/or Services and must supply proof of registrations, licences and certifications upon request by CHL;
  - provide the Goods and/or Services in compliance with the *Work Health and Safety Act (NSW) 2011*;
  - use reasonable endeavours to ensure that when supplying the Goods and/or Services they do not interfere with the operation of any CHL office or aged care facility;
  - agree on a time to perform excessively noisy work with CHL and stop noisy work at any time when instructed by CHL;
  - take all reasonable steps to ensure the health and safety of itself, its Personnel, and other persons at locations where the Goods and/or Services will be provided;
  - where relevant, ensure any equipment used is suitable for the work and maintained in good working condition;
  - make themselves aware of emergency evacuation plans and contact details displayed in each room of CHL's premises;
  - notify CHL immediately either by telephone or in writing of any accident or incident that occurs at locations where the Goods and/or Services will be provided;
  - make and keep a record of any 'notifiable incident' (as defined in the *Work Health and Safety Act (NSW) 2011* and keep that record for a period of 5 years from the date of notice of the incident;
  - comply with all signs and directions of CHL regarding the use of telecommunications devices within CHL's premises; and
  - comply with all rules and regulations regarding CHL's premises.
- 1.5 If the Supplier becomes aware of any fault or defects in any Goods supplied, it must immediately notify CHL and assist CHL to recall any such defective or faulty Goods, at no cost to CHL.
- 1.6 The Supplier must not and must ensure that its Personnel do not accept any gift from any resident or client of CHL valued at over \$25 AUD. This includes any gift that is given directly or indirectly, or by way of payment for goods or services, or otherwise including if the gift is given to the Supplier or its Personnel as a beneficiary under a will.
- 1.7 Title to Goods passes to CHL on delivery.

## 2 Warranties

- 2.1 The Supplier warrants that the Goods and, if applicable, any items used in the supply of those Goods and/or Services will:
- be fit for the purpose for which the Goods and/or Services are being provided;
  - be of merchantable quality and be free from defect in material and workmanship;
  - have any applicable manufacturer's warranties the benefit of which must be assigned to CHL without liability;
  - be supplied within a reasonable time, if no time has been specified;
  - be in accordance with the description of Goods provided by the Supplier;
  - match any sample or demonstration model provided by the Supplier;
  - satisfy any extra promises made by the Supplier;
  - be sold to CHL free of any encumbrances on the title of the Goods; and
  - be free of any hidden securities or charges.
- 2.2 The Supplier represents and warrants that it and its Personnel engaged:
- will provide the Goods and/or Services with all due care and skill and to a high standard; and
  - will possess the necessary skills, licenses, qualifications, training and expertise to perform its obligations and to provide the Goods and/or the Services.
- Nothing in the warranties in this clause 2 is intended to limit or exclude any warranties CHL is entitled to at law.
- 2.3 If the Supplier breaches any of the warranties, the Supplier will reimburse CHL for any loss or costs incurred as a result of the Supplier's breach, and at CHL's election:
- will resupply the Goods and/or Services at no cost to CHL, or
  - refund any payment made by CHL for the Goods and/or Services, or where no payment has been made, waive any right or claim to payment.
- These remedies are without prejudice to any other right or remedy to which CHL may be entitled at law or under any indemnity contained in these Terms and Conditions.
- 2.4 Without limiting any warranty or condition to which CHL is entitled by law, any Goods and/or Services supplied under this Agreement are warranted for the longest of the following periods:
- any specific warranty period specified in this Agreement;
  - any applicable manufacturer's warranty; or
  - 90 days from the date the Goods are supplied.

## 3 Payments

- 3.1 CHL will pay the Supplier the payments as set out in the Order.
- 3.2 CHL will pay the Supplier within 30 days from the date a valid tax invoice is received by CHL, provided it has verified to its satisfaction that the Goods and/or Services for which it has been invoiced have been delivered or provided and that the details in the tax invoice are correct.
- 3.3 CHL may withhold the payments to the Supplier if CHL decides (acting reasonably) that the Goods and/or Services provided by the Supplier are not in accordance with the Order.
- 3.4 CHL may deduct from monies otherwise due to the Supplier any debt or other moneys due from the Supplier to CHL and any claim to money which CHL may have against the Supplier whether for damages (including liquidated damages) or otherwise.

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### 4 Statutory obligations

- 4.1 The Supplier acknowledges CHL is an aged and community care provider and CHL has obligations relating to the provision of these services.
- 4.2 The Supplier must ensure that the Goods and/or Services and their supply complies with any relevant laws, licences, regulations, rules, codes, guidelines, principles, policies, standards (industry, accreditation or Australian standards) and directives of the Commonwealth of Australia and NSW and Qld (as appropriate), as amended from time to time. This includes, but is not limited to the Aged Care Act 1997 (Cth) and any licence conditions relevant to the operation of CHL's aged care facilities.
- 4.3 If any of the Goods include food products, the Supplier must ensure that the Goods comply with the relevant legislation, standards and guidelines, and the Supplier only purchase food products from HACCP Australia system approved suppliers.
- 4.4 If any of the Goods include medical supplies or therapeutic or prophylactic devices, the Supplier must ensure that the Goods comply with all applicable laws and industry and government standards.

### 5 Confidentiality

- 5.1 'Confidential Information' means any information of a confidential nature acquired by the Supplier and its Personnel in supplying the Goods and/or Services relating to CHL, its residents, clients or personnel. This includes, but is not limited to, trade secrets, know how, information imparted in circumstances of confidence or labelled confidential regardless of when a person becomes aware that that information is confidential.
- 5.2 The Supplier must ensure that all Confidential Information is kept confidential and is not copied, published, disclosed or discussed with any person other than employees nominated by CHL, and if required by CHL ensure all Personnel of the Supplier enter into a deed of confidentiality with CHL in a form prescribed by CHL.
- 5.3 The Supplier and its Personnel will immediately return all Confidential Information in whatever form (including all electronic materials) obtained by it during the provision of the Goods and/or Services.

### 6 Intellectual Property

- 6.1 The Supplier must not use any intellectual property which CHL owns, is licensed to use or has other intellectual property rights in relation to, without the prior written consent of or a licence from CHL. This includes but is not limited to any sign, mark, name, logo or badge of CHL.
- 6.2 If the Services include the preparation or production of any materials, including documents, drawings, designs or similar (Material), immediately upon the creation or modification of any such Material, the intellectual property rights in or relating to that Material shall vest in CHL.
- 6.3 CHL shall retain all intellectual property rights in any original ideas, equipment, processes or systems provided to the Supplier for use in carrying out the Services and production of the Material which have been created by CHL or on its behalf.
- 6.4 The Supplier warrants that, unless otherwise stated, in providing the Services the Supplier owns or is licensed to use the intellectual property rights in the Material and the Supplier indemnifies CHL against liability, loss or damage arising out of the use of the Material infringing the intellectual property rights of any third party.

### 7 Privacy

- 7.1 'Privacy Law' means Health Records and Information Privacy Act 2002 (NSW), Privacy and Personal Information Act 1998 (NSW) and the Privacy Act 1988 (Cth), "personal information" and "health information" have the same meaning as in the Privacy Act 1988 (Cth) and Health Records and Information Privacy Act 2002 (NSW), 'Eligible Data Breach' has the meaning given by the Privacy Act 1988

(Cth), and Potential Data Breach means any event or series of events which a party considers is or could reasonably become an Eligible Data Breach.

- 7.2 The Supplier must ensure it and its Personnel comply with CHL's privacy policy and the Privacy Laws as if those obligations applied directly to the Supplier and its Personnel in relation to personal information or health information obtained from CHL or derived from information obtained from CHL; and directly from any person in the course of providing the Goods and/or Services.
- 7.3 The Supplier must ensure it and its Personnel do not do anything which might cause CHL to breach the Privacy Laws or its privacy policy.
- 7.4 The Supplier must ensure it and its Personal do all things reasonably requested by CHL to enable CHL to comply with all requirement of the Privacy Law.
- 7.5 The Supplier must immediately notify CHL if it becomes aware that disclosure of personal information and health information may be required by law or any of its obligations in clauses 7.2, 7.3 and 7.4 have been or may be breached.
- 7.6 The Supplier must comply with all directions of CHL in relation to any notification made under clause 7.
- 7.7 The Supplier must, if directed by CHL issue an apology to clients as indicated by CHL and also advise clients that the matter may be referred to the Privacy Commissioner.
- 7.8 To the extent that the Supplier considers that a Potential Data Breach exists, the Supplier agrees that it will consult with CHL as to the proper management of that Potential Data Breach. In particular, the Supplier must:
- without limiting this clause, promptly notify CHL of the Potential Data Breach, except where CHL has notified the Supplier of the Potential Data Breach;
  - provide reasonable assistance as reasonably requested by CHL for the purposes of assessing the Potential Data Breach;
  - have regard to CHL's assessment of whether an Eligible Data Breach is suspected of having occurred or is believed to have occurred;
  - unless otherwise directed in writing by CHL, defer (in accordance with section 26WJ of the Privacy Act 1988 (Cth) to CHL's assessment of whether it is believed that an Eligible Data Breach has occurred; and
  - in relation to any notification, unless otherwise directed in writing by CHL, defer (in accordance with section 26WM of the Privacy Act 1988 (Cth)) to CHL's notification in respect of any Eligible Data Breach that is believed to have occurred.

### 8 Insurances

- 8.1 The Supplier must hold:
- adequate workers compensation insurances in accordance with applicable legislation;
  - a public liability insurance policy to the value of \$20,000,000.00 for any one occurrence;
  - where relevant, a professional indemnity insurance policy to the value as shown in the Order;
  - for the supply of Goods, products liability, and products recall insurance; and
  - adequate insurance to cover its obligations under this Order including but not limited to the indemnity given by the Supplier.
- 8.2 The Supplier must immediately notify CHL of any changes to its insurance policies.
- 8.3 Before commencing the supply of Goods and/or Services, the Supplier must provide CHL with current certificates of currency for each of the insurance policies for it and its sub-contractors. If the Supplier does not comply with this clause, CHL may:

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- (a) take out the relevant policy for the Supplier and deduct any amount paid for that policy from any payments, or
- (b) terminate the Agreement immediately.

### 9 Indemnity

9.1 The Supplier will at all times indemnify and keep indemnified CHL and its officers, employees and agents (**those indemnified**) from and against any loss, including loss or damage to CHL's premises or liability reasonably incurred or suffered (including legal costs and expenses) by any of those indemnified where such loss or liability was caused or contributed to by:

- (a) any negligent or unlawful act or omission by the Supplier or its Personnel;
- (b) a breach of these Terms and Conditions by the Supplier or its Personnel;
- (c) the Goods or the supply of the Goods;
- (d) the performance of the Services; or
- (e) a third party claim against CHL for death or personal injury arising from the Supplier's performance of the Services; other than those arising from the negligent act or omission of CHL.

9.2 Any indemnity given under this Order applies to claims which may have occurred but are not notified during the period of the Order.

### 10 Assignment and Subcontracting

10.1 The Supplier must not assign or subcontract the whole or any part of this Order without the prior written consent of CHL.

10.2 If any part of the provision of the Goods and/or Services is subcontracted, the Supplier must also provide CHL with a completed Sub-Contractor Statement (found at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)) together with a relevant Certificate of Currency.

10.3 CHL may assign or novate this Order at any time by written notice to the Supplier.

### 11 Termination

11.1 CHL may terminate this Order at any time by providing at least 30 days prior written notice to the Supplier.

11.2 CHL may terminate this Order, with immediate effect if the Supplier breaches the Terms and Conditions of this Order and that breach is not capable of being remedied, or the breach is capable of being

remedied and is not remedied within 14 days of CHL's request to do so.

11.3 CHL may also immediately terminate this Order if:

- (a) the Supplier or its employees, agents or sub-contractors are guilty of misconduct, dishonesty or wilful negligence, or there is a substantial failure to provide the Goods and/or Services with due care and skill;
- (b) the Supplier ceases to carry on business, becomes bankrupt or if the Supplier is a corporation and commits an insolvency event; or
- (c) the Supplier fails to comply with any reasonable instruction or direction from CHL its employees and agents.

### 12 Inconsistency

This Order comprises of the Order form, these Terms and Conditions and any annexures or attachments. If there is any inconsistency between the documents the Order form and Terms and Conditions shall prevail to the extent of any inconsistency.

### 13 Anti-Slavery

13.1 In performing the obligations under this Agreement, the Supplier shall and shall ensure that each of its Personnel:

- (a) does not employ, support or condone any form of modern slavery, or human trafficking;
- (b) does not use forced involuntary or underage labour;
- (c) provides suitable working terms and conditions and treats employees fairly;
- (d) complies with all applicable anti-slavery and human trafficking laws, statutes, regulations codes and any CHL Anti-Slavery Policy in force from time to time (Anti Slavery Laws);
- (e) does not engage in any practice activity or conduct that would breach any such Anti-Slavery Laws;
- (f) does nothing to cause CHL to be in breach of any such Anti Slavery Laws; and
- (g) notifies CHL should the Supplier become aware of any breach of this clause.