

PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 "**Agreement**" means the Purchase Order together with these standard terms, including all schedules and annexures.
- 1.2 "**Consignment Order**" means Epworth's request for Products or any Products placed on consignment by the Supplier to Epworth at an Epworth site.
- 1.3 "**Data Breach**" means any incident that involves in the loss, theft or unauthorised access of Personal Information that the Supplier acquires or has access to under this Agreement.
- 1.4 "**Epworth**" means Epworth Foundation trading as Epworth HealthCare ABN 97 420 694 950.
- 1.5 "**Modern Slavery**" means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, forced or servile marriage, the sale and exploitation of children and other slavery-like exploitation as prohibited or defined as a modern slavery offence under anti-slavery and human trafficking laws, statutes and codes from time to time in force.
- 1.6 "**Modern Slavery Laws**" means the *Modern Slavery Act 2018* (Cth) and Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth) and any other anti-modern slavery laws or regulations in force in Australia from time to time.
- 1.7 "**Modern Slavery Offence**" means any offence under any Modern Slavery Law and any conduct which would constitute Modern Slavery.
- 1.8 "**Personal Information**" has the meaning given to it in the *Privacy Act 1988* (Cth);
- 1.9 "**Products**" means the goods or equipment specified in the Purchase Order or Consignment Order (including accessories and spare parts).
- 1.10 "**Purchase Order**" means Epworth's order for Products issued to the Supplier.
- 1.11 "**Services**" means the services specified in the Purchase Order and all necessary ancillary and incidental work.
- 1.12 "**Supplier**" means the person or entity supplying Products to Epworth (as identified in the Purchaser Order).
- 1.13 "**Supplier Code of Conduct**" means Epworth's Supplier Code of Conduct, which can be accessed at epworth.org.au, as amended from time to time.

2. APPLICATION AND INTERPRETATION

- 2.1 These standard terms apply to the supply of the Products or Services set out in each Purchase Order except where there is a separate duly executed, valid, written contract which applies to the supply of the Products or Services (**Head Contract**). Where there is a Head Contract, the terms of the Head Contract will prevail over the terms of this Agreement to the extent of any inconsistency.
- 2.2 The Supplier acknowledges and agrees that:
 - (a) this Agreement will, in all circumstances, prevail over the Supplier's terms and conditions of supply (if any);
 - (b) if any conditions contained in the Supplier's quotation or other documentation (other than the attached Purchase Order) are contrary to or differ from the conditions specified in this Agreement, the conditions specified in this Agreement will prevail;

- (c) acceptance of this Agreement and/or performance of this Agreement will be deemed to be acceptance of this condition notwithstanding that the acceptance of any documentation of the Supplier may contain a condition similar in terms to this condition.

- 2.3 Except to the extent expressly contained in a Head Contract, any prior representations, negotiations, arrangements, understandings or communications between the parties in connection with the Products or Services are superseded by this Agreement.
- 2.4 The Purchase Order will prevail over these standard terms to the extent of any inconsistency.
- 2.5 Where Products are to be supplied on consignment, the terms contained in Annexure A will also apply and Annexure A will prevail to the extent of any inconsistency.

3. PRICES, INVOICE AND PAYMENT

- 3.1 The price for the Products or Services are as set out in the Purchase Order. No variation will be accepted, without the prior written approval of Epworth.
- 3.2 The price is exclusive of GST and Epworth agrees to pay GST in addition to the price if the supply of the Product or Services constitutes a Taxable Supply. The Supplier will issue a valid Tax Invoice to Epworth on delivery of the Products. The Supplier warrants that it is registered or will be registered for an Australian Business Number (ABN) and for GST purposes at each time a taxable supply is made. GST, Taxable Supply and Tax Invoice have the meanings attributed in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 3.3 Except where Products are supplied by the Supplier to Epworth on consignment (in which case, clause 3 of Annexure A will apply in relation to those Products), Epworth will pay the price stated on the Purchase Order for Products or Services supplied in accordance with this Agreement upon receipt of a properly rendered valid invoice. Payments must be within 60 days following receipt of a valid invoice. Invoices are to be sent to the individual/department described in the Purchase Order.

4. TITLE AND RISK

- 4.1 Except where Products are supplied by the Supplier to Epworth on consignment (in which case, clause A4 of Annexure A will apply in relation to those Products), title to Products will pass to Epworth upon the earlier of physical delivery or payment and risk in Products will pass to Epworth after physical delivery is taken by Epworth and the Products have been inspected and accepted by Epworth in accordance with clause 5.

5. INSPECTION AND REJECTION

- 5.1 Products delivered in accordance with this Agreement are only accepted when they have been inspected by an authorised representative of Epworth.
- 5.2 Epworth may reject any Products, even after they have been accepted, if they are defective or not in accordance with Epworth's specifications or do not meet the purpose for which Epworth purchases them (**Rejected Product**). Rejected Products will be held entirely at the risk of the Supplier. Rejected Products must be removed by and at the expense of the Supplier within 7 days of the Supplier being notified of the rejection.

5.3 Any payment made for Products prior to inspection will not constitute acceptance and the Supplier must refund to Epworth any payment made in respect of the Products (including transportation costs) immediately on receipt of advice of rejection.

6. RECORDS

6.1 The Supplier must maintain accurate records of the type and quantity of Products and Services supplied to Epworth. Such records must promptly be made available to Epworth upon request.

7. PACKING AND DELIVERY OF PRODUCTS

7.1 All Products the subject of the Purchase Order must be properly packed, marked and delivered in accordance with Epworth's policies and requirements and in accordance with all relevant laws, standards and industry codes of conduct. The Supplier will not charge for packing, boxing, transporting or storing the Products.

7.2 The Supplier must deliver the Products to the address specified by Epworth on the Purchase Order on the date specified for delivery in the Purchase Order. The Supplier must promptly notify Epworth in writing if the Supplier does not expect to meet the date specified for delivery in the Purchase Order.

8. PROVISION OF SERVICES

8.1 The Supplier must provide the Services competently, safely and in compliance with all applicable regulations, ordinances, laws, industry standards and Epworth's policies and procedures.

8.2 At any time, if Epworth is dissatisfied with the Supplier's provision of the Services, it may request the Supplier to provide the Services again and the Supplier must perform the work at no extra charge to Epworth.

8.3 The Supplier must not subcontract or delegate the provision of the Services to any other party without the prior written consent of Epworth. In any event, any subcontracting or delegation by the Supplier will not relieve the Supplier of any of its obligations and the Supplier must ensure that its subcontractors comply with the provisions of this Agreement.

9. CANCELLATION

9.1 Epworth may cancel the Purchase Order or any undelivered part of the Purchase Order if the Supplier does not make deliveries strictly in accordance with the delivery instructions or commits any breach of this Agreement, becomes insolvent or commits an act of bankruptcy or has an administrator, liquidator, receiver or official manager appointed to it, or if the supplier ceases or indicates that it is about to cease carrying on its business. This cancellation is in addition to any other remedies Epworth may have in law or in equity.

10. WARRANTIES

10.1 The Supplier warrants to Epworth that all Products supplied pursuant to this Agreement are of good and merchantable quality, are new and of good material and workmanship, are fit for their intended purpose and are free from defects in design, materials and workmanship, comply with all applicable laws, statutes, regulations and code (including all relevant standards adopted by such bodies as the Australian Standards Association, the Therapeutic Goods Administration and with any requirements of Commonwealth, State or Territory, and local government authorities), and are

adequately packaged and clearly, correctly and legally labelled.

10.2 The Supplier warrants that it has a right to sell the Products and the Products are free from any charge or encumbrance.

10.3 Where applicable, the Supplier guarantees the Products against faulty workmanship and materials for 12 months from acceptance or for the period offered by the manufacturer (if longer).

10.4 The Supplier warrants to Epworth that the Services will be performed with all due skill and care normally exercised by qualified and experienced persons in the performance of similar services. Where applicable, the Supplier guarantees the Services against faulty workmanship for 12 months from completion of the Services.

10.5 Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy conferred on Epworth by the *Competition and Consumer Act 2010* (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement.

11. INDEMNITY

11.1 The Supplier will be liable for and must indemnify Epworth and its officers, employees and agents against any liability, loss, damage, or expense (including legal costs on a full indemnity basis) incurred or suffered as a result of: the supply of the Products or Services by or on behalf of the Supplier; any damage to property, real or personal, including any infringement of third party intellectual property rights; any injury to persons, including injury resulting in death and economic loss; a warranty by the Supplier being or becoming inaccurate; any breach of this Agreement by the Supplier; and anything done by the Supplier, or an agent or employee of the Supplier upon the premises of Epworth in relation to this Agreement. This indemnity is in addition to any other remedies which Epworth may have at law or in equity. This indemnity is continuous and will survive the expiry or termination of this Agreement.

12. INSURANCE

12.1 Prior to delivering the Products to Epworth and/or provision of the Services, the Supplier must effect and maintain all insurances which are necessary in respect of this Agreement and to fully indemnify Epworth in accordance with this Agreement. This insurance must be with a reputable insurer and in respect of public and product liability insurance, be for an amount not less than \$20 million in respect of any one occurrence. Upon request, the Supplier must provide proof that the insurances required by this Agreement has been effected and maintained.

13. COMPLIANCE

13.1 The Supplier must comply with all applicable laws and regulations and the Supplier Code of Conduct. The Supplier must hold all registrations and licences which are required to lawfully perform its obligations under this Agreement.

13.2 The Supplier must ensure that its employees, agents and any contractors engaged by it comply with all applicable laws and regulations and the Supplier Code of Conduct.

13.3 The Products and Services must comply with all relevant statutory requirements, codes of practice and Australian Standards. The onus rests with the Supplier to provide evidence of compliance.

13.4 Without limiting the foregoing, the Supplier must ensure that all Products supplied under this Agreement that are required to be approved for use and listed on the Australian Register for Therapeutic Goods (**ARTG**) are approved for use and listed within the ARTG.

14. CONFIDENTIALITY, PRIVACY AND DATA BREACH

14.1 Without the prior approval of Epworth, the Supplier must not, and must ensure that its employees, agents and contractors do not, disclose to any person any information acquired in connection with this Agreement or the provision of the Products or Services, including information concerning Epworth, its staff or patients, except as required by law.

14.2 Without limiting any other clause in this Agreement, the Supplier must:

- (a) comply with all Commonwealth, State and Territory privacy, health records or similar legislation and regulations, including but not limited to the *Privacy Act 1988* (Cth);
- (b) take all reasonable measures to ensure that Personal Information held in connection with this Agreement is protected against loss, and against unauthorised access, use, modification, disclosure or other misuse; and
- (c) implement administrative, physical and technical safeguards to protect Personal Information and its own information technology systems that are no less rigorous than accepted industry practices.

14.3 The Supplier must notify Epworth of a Data Breach as soon as possible, but in any event no later than twenty-four (24) hours after Supplier becomes aware of it. Except where required by law, the Supplier must not inform any third party of any Data Breach without first obtaining Epworth's prior written consent.

14.4 As soon as possible after any notification of a Data Breach, the parties must coordinate with each other to investigate the Data Breach. The Supplier agrees to provide reasonable assistance and cooperate with Epworth in the handling of the matter. The Supplier must reimburse Epworth for costs incurred by Epworth in responding to, and mitigating damages caused by, any Data Breach.

14.5 The obligations imposed by this clause will survive the expiry or termination of this Agreement.

15. MEDIA AND ADVERTISING

15.1 The Supplier will not, without first obtaining the written consent of Epworth:

- (a) in any manner advertise or publish the fact that the Supplier provides or has provided any goods or services to Epworth; or
- (b) use any trade marks, trade names or business names of Epworth in the Supplier's advertising or promotional materials; or
- (c) make or authorise any press release, statement to the media or other public statement in relation to or in connection with this Agreement or purportedly on behalf of, or that mentions or refers to (directly or indirectly) Epworth.

15.2 The obligations imposed by this clause will survive the expiry or termination of this Agreement.

16. MODERN SLAVERY

16.1 The Supplier acknowledges that Epworth has obligations to comply with Modern Slavery Laws, and represents and warrants to Epworth that, at the date of entering into this Agreement, the Supplier:

- (a) as no knowledge of any Modern Slavery Offences currently occurring within its organisation or its supply chain;
- (b) will continuously use its best endeavours to identify the risk of, and prevent the occurrence of, Modern Slavery Offences within its organisation and its supply chain; and
- (c) has complied and will continue to comply with all Modern Slavery Laws.

16.2 The Supplier will notify Epworth in writing as soon as practicable upon becoming aware of any Modern Slavery or Modern Slavery Offences within its organisation or supply chain.

16.3 If requested by Epworth, the Supplier will promptly provide Epworth with any information, reports or documents in relation to any Modern Slavery Offences or any risk of Modern Slavery Offences within the Supplier's organisation or supply chain as may be reasonably required by Epworth from time to time (including the completion of a modern slavery questionnaire on an annual basis).

16.4 In the event that Epworth has at any time during the term of this Agreement reasonable cause to believe that the Supplier is in breach of any of the provisions of this clause 16, Epworth may suspend performance of or terminate this Agreement with immediate effect by written notice to the Supplier and immediately suspend or cancel any Purchase Order.

17. GENERAL

17.1 The Supplier may only assign any of its rights under this Agreement with Epworth's prior written consent.

17.2 The Supplier is not an employee, agent or representative of Epworth and has no authority to act on behalf of Epworth.

17.3 If a provision of this Agreement is invalid or unenforceable, it is to be read down or severed to the extent of the invalidity or unenforceability and that fact will not affect the remaining provisions.

17.4 The terms and conditions of this Agreement will not be read and construed adversely in relation to a party only because that party was responsible for its drafting.

17.5 This Agreement governed by and construed in accordance with the laws of the State of Victoria, Australia.

ANNEXURE A – ADDITIONAL TERMS AND CONDITIONS FOR CONSIGNMENT OF PRODUCTS

A1. APPLICATION

The additional clauses in this Annexure A and the standard terms apply to the supply of the Products set out in each Consignment Order except where there is a separate duly executed, valid, written contract which applies to the supply of the Products on consignment (**Head Contract**). Where there is a Head Contract, the terms of the Head Contract will prevail over the terms of this Agreement to the extent of any inconsistency.

This Agreement continues to apply to applies to the Products placed on consignment until Epworth terminates the Agreement in writing. The Supplier must remove all consignment stock (at its expense) within 7 days of receiving notice of the termination of the Agreement.

A2. STOCK

Management of Stock

The Supplier is responsible for the management of the stock levels of the Products and must undertake a stocktake of the Products on at least a monthly basis, in the presence of an Epworth representative. Such stocktakes must include making a record of any short dated or expired Products. At the completion of the stocktake, both parties must agree upon any discrepancies found and must sign the record of the stocktake. The Supplier must provide Epworth with a stocktake report within 7 days of the stocktake. If a stocktake of the Products reveals that there are Products lost that are not otherwise accounted for, the parties must work together to determine the source of the discrepancy within 30 days. If Epworth agrees that Products were delivered and have been lost at the Epworth site, an official purchase order will be provided by Epworth and the Supplier may invoice Epworth for the lost Products, however, it must do so within 30 days of the stocktake that revealed the discrepancy. For the avoidance of doubt, the Supplier is not entitled to invoice Epworth for any lost Products after 30 days from the discovery of the discrepancy.

Removal of Products

The Supplier must not remove any Products from an Epworth site without the written approval of an Epworth representative. It will be a material breach of this Agreement if the Supplier removes Products from an Epworth site other than in accordance with the terms of this Agreement. Epworth may, at any time, require the Supplier to collect any unused Products at the Supplier's expense as soon as is reasonably practicable after receipt of a written request from Epworth. The Supplier must immediately remove (at its expense) any Products from Epworth sites that have expired or are short dated. Expired and short dated stock is the responsibility of the Supplier, and Epworth will not be liable to pay for any item of expired or short dated stock. In addition, if Epworth reasonably believes that any Products are not capable of use, the Supplier must (at its expense) collect such Products as soon as is reasonably practicable after receipt of a written request from Epworth. In the case of Products which Epworth reasonably believes are not capable of use, the Supplier will (at its expense) collect such Products as soon as is reasonably practicable after receipt of a written request from Epworth.

Records

The Supplier must maintain accurate records of the type and quantity of Products held on consignment at each Epworth site. All records must be updated by the respective parties each time a change is made to the consignment holdings.

Access to Premises

Epworth grants the Supplier a right of access to the Epworth sites where the Products are being stored in order for the Supplier to comply with its obligations under this Agreement. This permission is personal to the Supplier and the Supplier's personnel and ceases immediately upon the termination or expiry of this Agreement. The Supplier must report to the Epworth representative prior to commencing any activities on an Epworth site, including undertaking a stocktake and the addition to or removal of any Products from Epworth's stock.

A3. PAYMENT

General

Epworth will have no obligation to pay for Products until they are used by Epworth, or Epworth agrees (in accordance with clause 2 above) that the Products have been lost and the Supplier seeks payment for the lost Products within 30 days of the discovery of the discrepancy in accordance with clause A2 of this Annexure A.

Provision of Purchase Order

Within 5 Business Days of using a Good, Epworth will provide the Supplier with a purchase order for the quantities of Products used. The purchase order will be marked "*Bill and Replace*" and will contain the product code, quantity used, details of lot, serial or batch numbers where possible and other relevant information as required and mutually agreed. Upon receipt of an official Epworth purchase order, the Supplier will invoice Epworth at the agreed price for the Products and will ship replacement Products to the relevant Epworth site. Epworth will pay the invoice within 60 days of receipt of a properly rendered invoice.

A4. TITLE AND RISK

Title in and risk of loss, deterioration or damage to the Products will remain with the Supplier until the Products are used by Epworth. If any Products are damaged or deteriorate in any way prior to their use by Epworth (unless caused directly by the negligence of Epworth or an Epworth employee), then Epworth will have no obligation to pay for the Products.

A5. EPWORTH'S OBLIGATIONS

Epworth will not cover, deface, mark or remove any part of the Products packaging or labelling. Epworth must ensure that the Products will be stored and labelled in such a way that it is clearly identifiable as consignment stock. Epworth will advise the Supplier in writing if Products are moved between Epworth sites, within 2 working days of the items being moved. Notwithstanding the ownership of the Products, Epworth will ensure the safe storage of the Products whilst they are stored at an Epworth site.