

Southern Cross Care (NSW & ACT) Limited Purchase Order Terms and Conditions

1 Goods and Services

- 1.1 The Supplier agrees to supply and deliver the Goods and/or Services to SCC as set out in the Purchase Order (Order) and in accordance with these Terms and Conditions.
- 1.2 The terms of this Purchase Order Contract may not be modified except as agreed in writing by SCC.
- 1.3 The parties may at any time enter into a SCC standard agreement in which case that SCC standard agreement will apply to the Goods and/or Services and will supersede this Purchase Order Terms and Conditions.
- 1.4 SCC agrees to pay the Supplier for the Goods and/or Services delivered or provided to it in accordance with clause 2.

2 Payments

- 2.1 SCC will pay the Supplier the price for the Goods and/or Services as set out in the Order.
- 2.2 The Supplier must issue a tax invoice to SCC for the Order which:
 - (a) sufficiently describes the Goods and/or Services (as applicable) to which the invoice relates;
 - (b) attaches the Order; and
 - (c) be in the form of a valid tax invoice and clearly separately shows the amount of any GST payable.
- 2.3 SCC will pay the Supplier within 30 days from the date a valid tax invoice is received by SCC, 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.
- 2.4 If SCC disputes the correctness of any invoice (or disagrees with any amount invoiced for any reason), then it may withhold payment of the disputed sum. In that circumstance, the Supplier must cancel the invoice in question and issue a new invoice in respect of the undisputed part of the original invoice, and SCC will pay such undisputed sum in settlement of the new invoice issued in accordance with this clause 2.4.
- 2.5 SCC may withhold the payments to the Supplier if SCC determines (acting reasonably) that the Goods and/or Services provided by the Supplier are not in accordance with the Order or these Terms and Conditions.
- 2.6 SCC may deduct from monies otherwise due to the Supplier any debt or other moneys due from the Supplier to SCC and any claim to money which SCC may have against the Supplier whether for damages (including liquidated damages) or otherwise.
- 2.7 An invoice received by SCC later than six (6) months after the Goods to which the invoice relates were supplied or the Services to which the invoice relates were performed will be void and SCC will not be required to pay the relevant invoice amount.

3 Provision of Goods and/or Services

- 3.1 The Supplier agrees that SCC may purchase Goods and/or Services similar or identical to those provided by the Supplier from other suppliers.
- 3.2 The Supplier must ensure that they and any person working with, for or under the direction of the Supplier including any sub-contractor (**Personnel**):
 - (a) will provide the Goods and/or Services with all due care and skill and to a high standard;
 - (b) 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 SCC;
 - (c) use reasonable endeavours to ensure that when supplying the Goods and/or Services they do not interfere with the operation of any SCC office or aged care facility;
 - (d) agree on a time to perform any excessively noisy work with SCC and stop noisy work at any time when instructed by SCC;
 - (e) take all reasonable steps to ensure the safety and wellbeing of persons on SCC's property;
 - (f) where relevant, ensure any equipment used in supplying Goods and/or Services is suitable and maintained in good working condition;

- (g) make themselves aware of emergency evacuation plans and contact details displayed by SCC;
 - (h) notify SCC immediately of any accident or incident that occurs on SCC property;
 - (i) comply with all signs and directions of SCC regarding the use of telecommunications devices within SCC's premises;
 - (j) supply the Goods and Services in accordance with any notes or instructions specified in the Order; and
 - (k) comply with all policies, rules and regulations regarding SCC's premises (including those relating to health and safety and security).
- 3.3 If the Supplier becomes aware of any fault or defects in any Goods supplied, it must immediately notify SCC and assist SCC to recall any such defective or faulty Goods, at no cost to SCC.
- 3.4 The Supplier must not and must ensure that its Personnel do not accept any gift from any resident or client of SCC 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.
- 3.5 Title to, and the risk of loss or damage to, Goods passes to SCC on delivery.
- 3.6 If the Supplier, or its Personnel, is reasonably likely to have access to any care recipient of SCC, the Supplier must provide SCC with a satisfactory National Criminal History Record Check (**NCHRC**) and/or statutory declaration as required by law or SCC policy in respect of itself and/or its Personnel prior to commencing provision of the Goods and/or Services. If any NCHRC is unsatisfactory to SCC, SCC may terminate this Order immediately. If the Supplier and/or any Personnel are charged with, or convicted of, murder or sexual assault or are charged with, or convicted and sentenced to imprisonment for, any other form of assault, SCC must be immediately notified and the Supplier and any person convicted must immediately cease supplying the Services to SCC.'

4 Warranties

- 4.1 The Supplier warrants that the Goods and/or Services and, if applicable, any items used in the supply of those Goods and/or Services will:
- (a) be in the form described in the Order;
 - (b) be fit for the purpose for which the Goods and/or Services are being provided;
 - (c) be new, of merchantable quality, and be free from defects in material and workmanship;
 - (d) have any applicable manufacturer's warranties the benefit of which must be assigned to SCC without liability.
- 4.2 The Supplier represents and warrants that it is capable of passing title in the Goods free from Security Interests (as defined in the Personal Property Securities Act 2009 (Cth) and all other adverse interests at the time they are supplied to SCC.
- 4.3 If the Supplier breaches any of the warranties, the Supplier will reimburse SCC for any loss or costs incurred as a result of the Supplier's breach, and at SCC's election:
- (a) will resupply the Goods and/or Services at no cost to SCC; or
 - (b) refund any payment made by SCC for the Goods and/or Services, or where no payment has been made, waive any right or claim to payment.
- 4.4 These remedies are without prejudice to any other right or remedy to which SCC may be entitled at law or under any indemnity contained in these Terms and Conditions.

5 Statutory Obligations

- 5.1 The Supplier must ensure that 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 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 SCC's aged care facilities.

- 5.2 If any of the Goods include food products, the Supplier must ensure that the Goods comply with relevant legislation, standards and guidelines and the Supplier must only purchase food products from HACCP Australia system approved suppliers.
- 5.3 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.

6 Confidentiality

- 6.1 Confidential Information' means any information of a confidential nature acquired by the Supplier or its Personnel in supplying the Goods and/or Services relating to SCC, 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.
- 6.2 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 SCC and, if required by SCC, ensure all Personnel of the Supplier enter into a deed of confidentiality with SCC in a form prescribed by SCC.
- 6.3 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 on termination of this Order or otherwise on demand.

7 Intellectual Property

- 7.1 The Supplier must not use any intellectual property which SCC owns, is licensed to use or has other intellectual property rights in relation to, without the prior written consent of or a licence from SCC. This includes but is not limited to any sign, mark, name, logo or badge of SCC.
- 7.2 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 SCC.
- 7.3 SCC shall retain all intellectual property rights in any original ideas, equipment, processes or systems provided by SCC to the Supplier for use in carrying out the Services and/or in the production of the Material.
- 7.4 The Supplier warrants that it owns or is licensed to use the intellectual property rights in the Material and the Supplier indemnifies SCC against liability, loss or damage arising out of the use of the Material infringing the intellectual property rights of any third party.

8 Privacy

- 8.1 'Privacy Law' means *Health Records and Information Privacy Act 2002 (NSW)*, the *Health Records (Privacy and Access) Act 1997 (ACT)* and the *Privacy Act 1988 (Cth)* and "personal information" and "health information" have the same meaning as in the Privacy Law.
- 8.2 The Supplier must ensure it and its Personnel comply with SCC'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 SCC or derived from information obtained from SCC; and directly from any person in the course of providing the Goods and/or Services.
- 8.3 The Supplier must ensure it and its Personnel do not do anything which might cause SCC to breach the Privacy Laws or its privacy policy.

9 Insurances

- 9.1 The Supplier must hold:
 - (a) workers compensation insurance in accordance with applicable legislation;
 - (b) a public liability insurance policy to the value of \$20,000,000 for any one occurrence;
 - (c) where relevant, a professional indemnity insurance policy to the value of \$10,000,000 for any one occurrence;
 - (d) for the supply of Goods, products liability and products recall insurance; and

- (e) adequate insurance to cover its obligations under this Order including but not limited to any indemnity given by the Supplier.
- 9.2 If requested by SCC, the Supplier must promptly provide copies of the certificates of currency for the insurances.

10 Indemnity

- 10.1 The Supplier will at all times indemnify and keep indemnified SCC and its officers, employees and agents (**those indemnified**) from and against any loss, including loss or damage to SCC'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 SCC for death or personal injury arising from the Supplier's performance of the Services.
- 10.2 The indemnity in clause 10.1 is held on trust by SCC for its officers, employees and agents.

11 Limitation of Liability

- 11.1 Notwithstanding any other provision of these Terms and Conditions and to the fullest extent permitted by law, SCC will not be liable for any consequential, indirect or special losses or damages of any kind suffered by the Supplier as a result of any act or omission whatsoever of SCC, its officers, employees or agents (including loss of profits, loss of revenue, loss of opportunity, business interruption or punitive exemplary damages).
- 11.2 Nothing in these Terms and Conditions is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.

12 Assignment and Subcontracting

- 12.1 The Supplier must not assign or subcontract the whole or any part of this Order without the prior written consent of SCC.
- 12.2 If any part of the provision of the Goods and/or Services is subcontracted, the Supplier must also provide SCC with a completed Sub-Contractor Statement (found at www.workcover.nsw.gov.au) together with a relevant certificate of currency in respect of any required insurances.
- 12.3 SCC may assign or novate this Order at any time by written notice to the Supplier.

13 Termination

- 13.1 SCC may terminate this Order without cause at any time by providing at least 30 days prior written notice to the Supplier.
- 13.2 SCC 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 SCC's request to do so.
- 13.3 SCC may also immediately terminate this Order if the Supplier:
- (a) acts or omits to act in a manner likely to:
 - (i) cause harm to a client or resident of SCC; or
 - (ii) has a material adverse impact on SCC or its business or interests, including a manner likely to bring SCC into disrepute;
 - (b) the Supplier ceases to carry on business, becomes bankrupt or, if the Supplier is a corporation, becomes insolvent or has a receiver, administrator or liquidator appointed (or any similar event or circumstance); or
 - (c) the Supplier fails to comply with any reasonable instruction or direction from SCC its employees and agents.

14 GST

- 14.1 In this clause 14, words that are defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning as in that Act.
- 14.2 Except as otherwise provided by this clause 14, all consideration payable in accordance with the Order and these Terms and Conditions in relation to any supply is exclusive of GST.
- 14.3 If GST is payable in respect of any supply made by the Supplier under these Terms and Conditions, subject to clause 14.4, SCC will pay to the Supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under the Order and these Terms and Conditions.
- 14.4 The Supplier must provide a tax invoice to the recipient before the Supplier will be entitled to payment of the GST payable under clause

15 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. These Terms and Conditions apply to the exclusion of any other terms the Supplier may seek to impose (including any terms printed on, or incorporated in, any quote or invoice).

16 Governing Law

These Terms and Conditions are governed by the laws applying in New South Wales and the parties submit to the exclusive jurisdiction of the courts in New South Wales.

17 General

- 17.1 **Waiver:** The failure of a party at any time to insist on performance of any provision of these Terms and Conditions is not a waiver of the party's right at any later time to insist on performance of that or any other provision of these Terms and Conditions.
- 17.2 **Further assurance:** Each party must promptly execute and deliver all documents and take all other action necessary to desirable to effect, perfect or complete the transactions contemplated by this Order and these Terms and Conditions.
- 17.3 **Survival and enforcement of indemnities:** Each indemnity in these Terms and Conditions is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Order. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by these Terms and Conditions.