

## TERMS OF TRADE for PURCHASE ORDERS issued by hA

### 1. Purchasing under these Terms

- 1.1. Any Purchase Order placed by hA or hA acting on behalf Auckland District Health Board, Northland District Health Board, Counties Manukau District Health Board or Waitemata District Health Board (or a Logistics Provider acting on their behalf) (each a **Purchaser**) are subject to these Terms of Trade (**Terms**), except where hA or the relevant DHB has signed a separate agreement for the relevant goods, equipment or services with the Supplier (in which case such agreement takes precedence).
- 1.2. Notwithstanding any terms of supply advised by the Supplier (including on the Supplier's invoices), these Terms will be paramount and will apply to the exclusion of any of the Supplier's documentation, even if at some later date a DHB, Logistics Provider or hA signs or otherwise purports to accept, the terms of that documentation.
- 1.3. The Supplier will supply and deliver the Supplies for the Prices, in accordance with Purchase Orders.
- 1.4. The Supplier will confirm receipt of each Purchase Order by email to the address advised by hA or to the hA Purchasing helpdesk telephone number specified on the PO. A Purchase Order will be deemed accepted if the Supplier does not reject it within one Business Day, or if Supplies are delivered to the Purchaser. If the Supplier receives a request or order for Supplies (including a verbal request) that is not, or does not appear to be, a properly constituted hA Purchase Order, the Supplier shall contact hA Purchasing and shall not accept the order until a proper Purchase Order is received, unless there is a specific agreement in writing that Supplies are to be provided in advance of a Purchase Order (e.g. where maintenance services are urgently required). No Purchaser will be liable for Supplies unless ordered on that Purchaser's Purchase Order unless there is such specific written agreement.
- 1.5. These Terms constitute a binding agreement between the Purchaser and the Supplier once a Purchase Order is accepted (or if Supplies are Supplied in advance of a Purchase Order, then from the time those Supplies are supplied).
- 1.6. The applicable Purchase Order number must be quoted by the Supplier on all correspondence and invoices relating to a Purchase Order.
- 1.7. The Supplier agrees that the terms of each Purchase Order are intended to confer benefits on and be enforceable by hA under the Contracts (Privity) Act 1982.
- 1.8. If hA purchases under these Terms and such purchase is for the purposes of resupply to a DHB any loss suffered by that DHB in relation to the Supplies shall be deemed a direct loss suffered by hA.

### 2. Supplier obligations

- 2.1. The Supplier will:
  - (a) maintain all necessary rights and permits to supply the Supplies;
  - (b) carry out its obligations under these Terms with reasonable care, skill and diligence, and in accordance with best industry practice and with all applicable laws;
  - (c) provide all personnel, materials, equipment and anything else required to provide the Supplies under these Terms;
  - (d) keep records of all Purchase Orders, deliveries and invoices relating to the Supplies for 7 years following last supply and make such available to hA or a Purchaser on request.

### 3. Supplier warranty

- 3.1. The Supplier warrants that the Supplies supplied will:
  - (a) comply in all respects with all standards, codes, regulations and statutory requirements relevant to the Supplies, including any required notifications (e.g. on the WAND database) or registrations for the whole term;
  - (b) be delivered free of any encumbrance, adverse interest or claim by any third party;
  - (c) have clear and indelibly inscribed labels in English;
  - (d) be new, of a high standard, of merchantable quality, manufactured in accordance with best industry practice, free from faults and defects and fit for the Purchaser's intended purpose; and
  - (e) not infringe the intellectual property rights of any third party.
- 3.2. If hA or a Purchaser notifies the Supplier of any breach of warranty the Supplier shall at its own expense promptly remedy each claim to hA's or the Purchaser's satisfaction. If the Supplier fails to do so promptly or if hA or the Purchaser reasonably determines that an urgent situation justifies it, then the Purchaser may remedy the breach and recover the cost of doing so from the Supplier.

- 3.3. The Supplier shall pass to the Purchaser at no cost (or if unable to do so shall hold for the Purchaser's benefit) all third party warranties in relation to the Supplies. If the Supplier cannot pass such warranty to the Purchaser it shall be responsible (at its own cost) for making all or any warranty claims on any Supplies supplied by third parties.

### 4. Packaging & Delivery

- 4.1. The Supplier will package and transport the Supplies in an appropriate manner.
- 4.2. The Supplies will be delivered to the Delivery Address (for goods) or provided at the specified site (for services) on the required date. If no date is specified or agreed in writing then Supplies must be delivered with all reasonable speed and so as to cause the least possible disruption to the Purchaser. hA may reject delayed deliveries.
- 4.3. A delivery note stating the Purchase Order number(s) and itemising each item purchased (including quantity) will be provided with the Supplies.
- 4.4. A Purchaser may on 24 hours' notice postpone any delivery and the Supplier will reschedule the postponed delivery as requested.
- 4.5. Partial deliveries of Supplies may only be made with the Purchaser's prior written consent.
- 4.6. The Supplier will ensure that each item supplied is labelled with the following information:
  - (a) manufacturer's name, product reference/supplier part number, unique lot/batch number and manufacturing date (if applicable) and expiry date;
  - (b) sterile Supplies will be in a peel back container and sterile Supplies, packs and sets will note the method of sterilisation;
  - (c) packs and sets will list all components.

### 5. Risk & acceptance

- 5.1. Risk in the Supplies will pass to a Purchaser upon its acceptance of the delivery note delivered with the Supplies.
- 5.2. Signing of a delivery note or physical acceptance of delivery will not be taken as acceptance of either the quality or quantity of the Supplies. Acceptance by the Purchaser is subject to its subsequent inspection and/or use of the Supplies.
- 5.3. Unencumbered title will pass on payment by the Purchaser for those Supplies, except in the case of Supplies implanted into or attached to a patient prior to payment, where title passes on implantation/attachment.

### 6. Access to Purchaser sites

- 6.1. If access to Purchaser sites is necessary for the delivery or provision of the Supplies, the Purchaser will allow access at reasonable times. The Supplier will observe the Purchaser's health & safety and security policies and procedures, and access may be denied for non-compliance.
- 6.2. The Supplier must comply with the Health & Safety at Work Act 2015 and accordingly ensure as far as is reasonably practicable that the health and safety of its personnel, the personnel of the Purchaser and of other persons is not put at risk from work carried out in the performance of these Terms and that it does not do anything likely to give rise to an improvement or prohibition notice or regulatory breach under such Act.

### 7. Defective and undelivered Supplies

- 7.1. Without limiting any other rights or remedies, the Supplier will rectify any defects associated with the Supplies at no extra cost to that Purchaser.
- 7.2. If any Supplies fail to comply with these Terms, such Supplies may (in the case of goods) be rejected and not paid for by the relevant Purchaser and, upon demand, be returned to the Supplier at the Supplier's risk and expense or (in the case of services) be re-performed at the Supplier's expense.
- 7.3. Where rejection or recall of Supplies applies, any additional costs incurred by a Purchaser in purchasing alternative product, including any difference between the price for the Supplies and the actual cost of purchase of the alternative supplies (if the actual cost is higher) will be paid to that Purchaser by the Supplier on demand and will be recoverable from the Supplier as a debt due to that Purchaser.

### 8. Recalls & product safety

- 8.1. The Supplier will notify hA and each Purchaser in writing immediately if it recalls or is required by Government or any other authorities to recall or modify any or all of the Supplies.
- 8.2. In such cases the Supplier will use its best endeavours to provide replacement Supplies that are acceptable to hA and affected Purchasers as soon as possible but not withstanding this the

Purchasers may reject any recalled or unsafe Supplies and purchase alternative supplies elsewhere.

- 8.3. If any Supplies are rejected or recalled, the Supplier will immediately refund to each affected Purchaser all money paid by that Purchaser for such Supplies, unless the Supplier has provided replacement Supplies to the satisfaction of that Purchaser. The Supplier will not at any time substitute any Supplies with any other product without prior written consent from the Purchaser.

## 9. Price & invoicing

- 9.1. A Purchaser will pay the Supplier the Prices plus GST (if any) for the supply of Supplies.
- 9.2. The Prices are the only amount payable for the delivery of the Supplies and include all the Supplier's costs and expenses in complying with its obligations (including freight, shipping, packing, duties, insurance etc.) unless otherwise agreed in writing. The Purchaser will not be required to pay any additional sums in respect of the Supplies.
- 9.3. Within two Business Days after the end of each calendar month, the Supplier will provide a valid GST invoice (marked "tax invoice") electronically to each Purchaser for Supplies supplied during the previous month showing all amounts due, Supplier details and GST number, the Purchase Order number and the quantity and description of Supplies and any other details reasonably requested.

## 10. Payment

- 10.1. If the Supplier has complied with these Terms, the Purchaser will pay the Supplier on or before the 20<sup>th</sup> day of the month following the month of receipt of a properly issued invoice unless different terms are agreed in writing by the Parties. A Purchaser may withhold payment in relation to any matter genuinely in dispute.
- 10.2. Failure by a Purchaser to dispute any invoice prior to payment will not prejudice that Purchaser's right (or hA's right) to subsequently dispute the correctness of such invoice. A Purchaser may withhold, deduct or set off the amount of any overpayment or any amount recoverable by Purchasers from the Supplier under these Terms.

## 11. Confidential Information

- 11.1. Each Party confirms that it will keep all information that is marked or should reasonably be regarded as confidential (including the fact and quantity of any Supplies ordered) confidential other than as necessary for the performance of these Terms (including the provision of shared services to any DHB, as required by law (including under the Official Information Act 1982), Ministers or parliamentary convention, with the other party's approval or if the information is already in the public domain other than through a party's breach. This is a continuing obligation and each party will ensure its personnel comply with it as if it applied to them.

## 12. Miscellaneous Terms

- 12.1. Survival: All terms that are intended to survive termination (including but not limited to indemnity, liability and confidentiality) shall do so.
- 12.2. No Waiver: A failure or delay on the part of any Party in exercising any power or right under these Terms will not operate as a waiver, nor will any single or partial exercise of such right or power preclude any other or future exercise of the same.
- 12.3. Time of the Essence: Time will be of the essence in relation to the Supplier's performance of its obligations under these Terms.
- 12.4. Governing Law: These Terms will be governed by the laws of New Zealand and the Parties submit to the jurisdiction of the courts of New Zealand.
- 12.5. Assignment etc: The Supplier may not assign or subcontract its obligations under these Terms without the prior consent of the relevant Purchaser. The Supplier agrees that it is solely responsible for its personnel, including any subcontractor engaged.
- 12.6. Non-merger: The warranties, undertakings and indemnities given under these Terms will not merge on any completion or settlement under these Terms or any other agreement between the Parties, but will remain enforceable to the fullest extent permissible, despite any rule of law to the contrary.

## 13. Definitions

- 13.1. Unless the context requires otherwise:
- (a) **Business Day** means any day excluding a weekend or public holiday in New Zealand.

- (b) **Delivery Address** means the address for delivery of Supplies notified to the Supplier.
- (c) **DHB** means means a District Health Board, being a body corporate constituted under the New Zealand Public Health and Disability Act 2000 as a District Health Board.
- (d) **hA** means healthAlliance (FPSC) Limited or healthAlliance N.Z. Limited as specified on the Purchase Order.
- (e) **Logistics Provider** means Onelink (a division of Pharmacy Retailing (NZ) Limited) or any other entity contracted to provide logistics support to a DHB, as described in a Purchase Order.
- (f) **Parties** means hA (which may be acting as agent for one or more DHBs) and the Supplier.
- (g) **Price** means the price for Supplies as agreed between the parties.
- (h) **Supplies** means the goods or services detailed in the Purchase Order. Clauses 4 (except 4.2), 5, 7 and 8 only apply where the Supplies are goods (including any goods supplied ancillary to services).
- (i) **Supplier** means the supplier specified on the Purchase Order.
- (j) **Purchase Order** means a purchase order as generated by hA or the purpose of ordering Supplies.
- (k) **Terms** means these terms of trade.

## 14. Interpretations

- 14.1. Unless the context requires otherwise: headings will be ignored in construing these Terms, the plural includes the singular and vice versa, a statute includes that any amendments to, regulations, orders in council and other instruments issued under, or passed in substitution of, that statute, an obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done, derivatives of any defined term have a corresponding meaning, references to dollars are to New Zealand dollars, "including" and similar words do not imply any limitation.

## 15. Terms Applicable to Consignment Supplies

- 15.1. **Consignment Supplies** means Supplies that remain the property of and at the risk of the Supplier until after usage, but are held by hA, a DHB or a Logistics Provider until required for use by the Purchaser.
- 15.2. If any of the Supplies are supplied as Consignment Supplies the following terms shall apply to those Supplies in precedence over other Terms:
- (a) the Purchaser will raise a Purchase Order immediately any Consignment Supplies are used;
- (b) usage (including opening the packaging) of any Consignment Supplies by the Purchaser shall constitute the formation of a binding agreement between that Purchaser and the Supplier, on the terms of the Terms (and any reference to a Purchase Order forming an agreement is deemed to refer to usage forming such agreement);
- (c) the stock of Consignment Supplies held by each Purchaser will be maintained by the Supplier at no less than three months' expected usage (unless another level is agreed);
- (d) Consignment Supplies will be managed by the Supplier via regular (at least every three months) reviews and stocktaking and reporting to the Purchaser of such reviews.;
- (e) expired Consignment Supplies will be replaced by the Supplier without charge, provided that the Purchaser will use reasonable endeavours to use Consignment Supplies on a first expiring, first out basis;
- (f) the Purchaser will notify the Supplier if any Consignment Supplies are damaged or out of its original packaging;
- (g) if the Supplier seeks payment for damage or loss, which party bears the cost of damage or loss will be agreed on a case by case basis in good faith;
- (h) Consignment Supplies will be delivered to the Purchaser on such days, at such time, so such places and in such quantities as agreed by the Purchaser. The Purchaser and the Supplier will work together to agree on these and any other operational details as required;
- (i) Consignment Supplies remain the property of the Supplier, and title (except for Supplies implanted into a Patient where title passes on implantation) and risk remains with the Supplier, until usage by the Purchaser; and
- (j) the applicable Price for Consignment Supplies is the Price at the time of usage, unless agreed otherwise in writing.