

CAPITAL & COAST DISTRICT HEALTH BOARD ('CCDHB') – STANDARD TERMS AND CONDITIONS

These terms and conditions are available on the CCDHB website and on request and apply to all Purchase Orders issued by CCDHB on or after September 2020 until further notice.

1. AGREEMENT

- a. These terms and conditions ('Terms') apply to all purchases where the parties **have not** signed a written agreement for the provision of the Goods and/or Services.
- b. The Agreement will be formed on the Seller's acceptance of the Purchase Order ('PO') and will include the terms of the PO and these Terms. Where there is any inconsistency between the two documents the terms of the PO will apply.
- c. The terms of the PO and these Terms are the entire agreement between the parties in relation to the supply of the particular Goods and/or Services and the Seller agrees that its own terms and conditions (whether provided to CCDHB or not) will not apply.
- d. The PO may be cancelled by CCDHB if the Goods and/or Services are not received by the Date Requested.

2. PAYMENT

- a. The PO and any other information reasonably requested by CCDHB must be quoted on all Packing Slips, Consignment Notices, Invoices advise notes and correspondence (if any).
- b. The Supplier must submit a valid and proper tax Invoice for payment for the Goods and/or Services following Delivery.
- c. Invoices are to be rendered promptly on dispatch of Goods or provision of Services and monthly statements are to be forwarded as soon as possible after the end of the account period.
- d. The Invoice will be posted against the PO. Provided that the Invoice is:
 - i. matched successfully against CCDHB's EOP system; and
 - ii. there is no dispute by CCDHB in terms of the time of delivery or fitness for purpose or quantity of the Goods or quality of the Goods and/or Services provided, the Invoice will be paid on the 20th of the following month.
- e. The Supplier acknowledges that payment may be delayed if these Terms, and the terms of any PO, are not followed.
- f. If any part of an Invoice or the Delivery of the Goods and/or Services is disputed by CCDHB:
 - i. CCDHB may withhold payment of the Invoice or part of the Invoice until the dispute is resolved; and/or
 - ii. CCDHB may withhold, deduct or set off any amount that was previously overpaid or any amount recoverable by it from the Supplier under these Terms or otherwise.

3. PACKING AND DELIVERY

- a. All Goods and/or Services may only be supplied with a valid PO.
- b. Any Goods supplied with an invalid PO may be rejected by CCDHB and returned at the Supplier's expense including the cost of packing, insuring and handling.
- c. The Supplier will securely pack and protect the Goods against damage and deterioration at the Supplier's expense.
- d. The Supplier must deliver the goods by the Date Requested. Time will be of the essence.

4. PASSING OF TITLE AND RISK

- a. Risk and title in the Goods will pass to CCDHB on Delivery.
- b. The Supplier has not registered and will not register a security interest in the Goods unless expressly agreed by CCDHB in writing.

5. RECEIPT AND ACCEPTANCE

- a. CCDHB is not required to receive partial or incomplete deliveries of Goods and/or Services.
- b. Receipt of any part of a delivery of Goods and/or Services does not bind CCDHB to accept any future deliveries.
- c. Neither CCDHB's receipt of a delivery nor any signature given at the time of delivery will be proof of acceptance that the Goods are satisfactory to CCDHB.

6. WARRANTIES – The Supplier warrants as follows:
- a. The Goods and/or Services will:
 - i. comply with any specifications or requirements provided by CCDHB.
 - ii. be fit for the purpose that CCDHB makes known to the Supplier
 - iii. be free of any defect (including latent defects)
 - iv. be new and previously unused unless specifically agreed by CCDHB in writing
 - v. if the Goods are installed by the Supplier, the Goods will be properly installed and integrated into CCDHB's systems and property, and will be compatible with them and not damage them;
 - vi. comply with all applicable legislation, regulation and codes of practice.
 - b. The Goods will be delivered by the Date Requested.
 - c. The Supplier has title to the Goods free from any third party interest.
 - d. The Supplier holds all IP rights relating to the Goods and/or Services required for the Goods and/or Services to be provided to CCDHB and the provision of the Goods and/or Services and/or use of them by CCDHB will not breach any third party's Intellectual Property Rights.
 - e. The Services will be carried out with all reasonable care, diligence and skill and by persons with the appropriate level of skill and experience.
 - f. The Supplier will comply with all applicable legislation, regulation and industry codes of practice.
 - g. The Supplier will comply with all of CCDHB's policies and procedures communicated to them and relevant to the provision of the Goods or performance of the Services, including but not limited to privacy, security and health and safety.
7. HEALTH AND SAFETY
- a. Where the Supplier or its workers (including subcontractors) are on CCDHB premises the Supplier will ensure that its workers undergo a site induction are aware of and:
 - i. comply with the Supplier's Health and Safety Policy and provide us with a copy together with any other health and safety information requested by CCDHB;
 - ii. comply with CCDHB's health and safety policy and procedures and Control of Contractors procedure;
 - iii. comply with all reasonable directions given by CCDHB.
 - b. The Supplier will ensure that it takes all reasonable steps to ensure the health and safety of its workers and any other people including subcontractors, service providers, visitors, patients and the public in any area where the Supplier is providing the Services or delivering Goods;
 - c. consult, co-operate with and co-ordinate its activities with CCDHB in relation to the Services or delivery of the Goods;
 - d. Notify and ensure that its workers and subcontractors notify CCDHB of any:
 - i. 'notifiable event' as defined in the HSWA;
 - ii. Near miss or exposure to a hazard;
 - iii. Any WorkSafe inspection, investigation or information request in connection with the provision of the Services;
 - iv. Site specific risk assessment or health and safety management plan prepared by the Supplier in connection with the Services.
 - e. Where the Supplier or any of its workers or subcontractors is in breach of its health and safety obligations under these Terms CCDHB may immediately terminate the PO and this Agreement or suspend the Supplier's performance of this Agreement in whole or in part on written notice to the Supplier.
8. ACCESS, SECURITY AND CONDUCT
- a. CCDHB will allow the Supplier's workers and subcontractors access to CCDHB's premises to the extent necessary to provide the Goods and/or Services.

- b. The Supplier will ensure that its workers and subcontractors comply with CCDHB's security and conduct requirements as notified to the Supplier by CCDHB. Any person who does not comply with these requirements may be refused access.

9. CONFIDENTIAL INFORMATION

- a. All Confidential Information is the property of CCDHB.
- b. The Supplier and all of its workers and subcontractors will hold all Confidential Information confidential and not disclose it to any other party, and only use it to perform its obligations under these Terms.
- c. The Supplier will destroy or return the Confidential Information on the request of CCDHB at any time.

10. DEFAULT

- a. CCDHB may suspend payment for the Goods and/or Services until the breach has been remedied to CCDHB's satisfaction.
- b. Where the default relates to **Goods**, CCDHB may reject the Goods in whole or part and:
 - i. Require the Supplier to collect the Goods at its own risk and expense;
 - ii. Return the Goods to the Supplier at the Supplier's risk and expense including the cost of packaging, transporting, insuring and handling and the Supplier must reimburse CCDHB for those costs;
- c. Where the Goods have already been paid for by CCDHB, it may:
 - i. Require the Supplier to replace, repair or re-supply the Goods at the Supplier's expense so that they conform with the terms of the PO or these Terms;
 - ii. Have a third party replace, repair or supply the Goods and recover the cost of doing so from the Supplier; or
 - iii. Request a refund from the Supplier. This will be recoverable from the Supplier as a debt due to CCDHB.
- d. Where the default relates to **Services**, CCDHB may:
 - i. Require the Supplier to perform the Services again to the required standard at no cost to CCDHB;
 - ii. Have a third party perform the Services and recover the cost of doing so from the Supplier;
- e. Where the Services have already been paid for by CCDHB, it may request a refund from the Supplier. This will be recoverable from the Supplier as a debt due to CCDHB.

11. TERMINATION

- a. CCDHB may terminate the Agreement by giving the Supplier 30 days written notice but will compensate the Supplier for any Goods and/or Services provided in accordance with the PO and these Terms up until the date of termination.
- b. CCDHB may terminate the Agreement or cancel any PO on written notice if:
 - i. the Supplier breaches any provision of these Terms and fails to remedy the breach within 10 days of giving written notice to the Supplier and requesting the breach to be remedied;
 - ii. the Supplier becomes bankrupt, goes into liquidation, ceases to carry on business, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with its creditors under the Companies Act 1993.
- c. Termination does not affect any responsibilities which are intended to continue or come into effect after the date of termination (e.g. confidentiality, indemnity, warranties etc).

12. INDEMNITY

- a. The Supplier indemnifies CCDHB against:
 - i. any claim, damage, loss, expense or liability that CCDHB incurs (including solicitor and own client costs) in respect of the Goods and/or Services
 - ii. any act or omission of the Supplier or its workers or representatives
 - iii. any failure to comply with the terms of the PO or these Terms including the warranties

- iv. any failure to comply with New Zealand law.
 - b. This obligation survives the termination of this Agreement.
- 13. LIABILITY OF CCDHB
 - a. If CCDHB is liable to the Supplier under or in connection with these Terms (including in contract, tort or equity), CCDHB's maximum liability is limited to an amount equivalent to the amount actually payable to the Supplier under the PO.
- 14. INTELLECTUAL PROPERTY ('IP')
 - a. All IP owned by either party and existing prior to the supply of Goods and/or Services under these Terms will remain that party's property ('existing IP')
 - b. The Supplier grants a non-exclusive licence to CCDHB to use any of its existing IP that is necessary for the purposes of this Agreement.
 - c. Any new IP that arises or is created by the Supplier or its workers or agents for the purposes of this Agreement will belong to CCDHB.
- 15. NOTICES
 - a. Any notice to be given under the Agreement must be in writing and delivered or sent:
 - i. by post to CCDHB's address Wellington Regional Hospital, Private Bag 7902, Wellington 6242 and will be deemed to be received 3 working days after it is posted;
 - ii. by email to RES-PurchasingOffcrs@CCDHB.org.nz and will be deemed to be received at the time sent provided the sender does not receive a bounce-back notification.
- 16. FORCE MAJEURE
 - a. Neither party will be liable to the other for failure to fulfil its obligations due to an event beyond its reasonable control (which does not include strikes or any form of labour dispute). The party suffering from the event will notify the other Party as soon as the event arises, and do all things reasonable to mitigate the event or remove its cause, and perform its obligations under the Agreement.
- 17. GENERAL
 - a. **Relationship** The parties agree and acknowledge that their relationship is that of Purchaser and Supplier and neither is the agent, partner or employee of the other and neither party has the authority to act for or to incur any obligation on behalf of the other party.
 - b. **Non exclusivity** The Supplier does not have an exclusive supply arrangement with CCDHB.
 - c. **Review and Audit** CCDHB may carry out a review of the Supplier's performance under this Agreement at any time including with regard to health and safety audits, and the Supplier agrees to provide reasonable assistance with the review including attending meetings and providing documentation.
 - d. **Assignment and sub-contracting** The Supplier may not assign, sub-contract or otherwise transfer any of its rights, benefits or obligations under this Agreement without the written agreement of CCDHB (which will not be unreasonably withheld). Where CCDHB does agree to any such transfer, the Supplier will remain liable under the terms of the PO and these Terms.
 - e. **No Waiver** No failure or delay of CCDHB in exercising its rights under these Terms will affect its rights in connection with that default or subsequent default.
 - f. **Variation** All variations to the PO and this Agreement must be agreed in writing by the parties.
 - g. **Public Announcements** The Supplier may not make advertise or publish the fact that the Supplier is providing Goods and/or Services to CCDHB without the written approval of CCDHB.
 - h. **Jurisdiction** The laws of New Zealand govern this Agreement.

Definitions

'Confidential Information' includes

- the terms of the PO and any associated correspondence including any specifications, drawings, designs, concepts or other information provided by CCDHB to the Supplier;
- any information highlighted by CCDHB as being confidential;
- any information that would reasonably be considered to be confidential.

'Date Requested' means the delivery date set out in the PO.

'Delivery' means the delivery of the Goods to and/or the provision of the Services at the location set out on the PO;

'Goods' means the goods, materials or substances specified in the PO;

'GST' means goods and services tax as defined in the Goods and Services Tax Act 1985 at the prevailing rate;

'HSWA' means the Health and Safety at Work Act 2015.

'IP' means any rights relating to the protection of industrial or intellectual property rights or confidential information and includes but is not limited to registered and unregistered inventions, discoveries, designs, patents, technology, processes, methods or techniques, copyright (including future copyright) throughout the world including all literary and artistic works, computer software, trade secrets and trademarks including service marks and trading names.

'Services' means the services specified in the PO;

'Supplier' means the party who receives a PO and agrees to provide Goods and/or Services under the terms of the PO and these Terms.