

Purchase Order Terms and Conditions

Version as at 25 April 2022.

By supplying goods or services to Peter MacCallum Cancer Institute (operating as Peter MacCallum Cancer Centre) (**Peter Mac**) in accordance with a Purchase Order, you (**Supplier**) are bound by these Terms and Conditions.

Email Procurement@petermac.org if you have any queries.

1. Application of terms and conditions

- a) The Supplier acknowledges and agrees that:
 - i. Peter Mac enters into this Agreement on its own behalf;
 - ii. Goods will be used by Peter Mac in the care and treatment of patients;
 - iii. the Supplier's liability in relation to the Goods is not limited to those arising from this Agreement and that the Supplier's liability extends to any claims made by Patients and other users or relevant third parties.
- b) In acknowledging clause 1(a), the Supplier further acknowledges and agrees that:
 - i. Peter Mac may place a Purchase Order for Goods under this Agreement; and
 - ii. that the Goods purchased under this Order will be supplied by Peter Mac to Peter Mac.
- c) The Supplier is deemed to have accepted these terms and conditions when the Supplier accepts and carries out the Order by its conduct or by oral or written communication.
- d) These terms and conditions (together with the Purchase Order and any specifications recorded in or referred to in the Purchase Order) represent the entire agreement between Peter Mac and the Supplier.

2. Title and risk in Goods

Risk in any Goods ordered passes to Peter Mac after delivery at the address detailed on the Purchaser Order. Title will pass to Peter Mac at the earlier of acceptance by Peter Mac or upon payment.

3. Delivery of Goods

- a) The Supplier must supply the Goods to Peter Mac in accordance with this Agreement and any reasonable directions given by Peter Mac.
- b) The Supplier must deliver the Goods to the location and time as set out in the Purchase Order. Acceptance of the Goods by Peter Mac will not be taken to have occurred until either:
 - i. acceptance is acknowledged in writing by Peter Mac or by similar electronic means at the point of delivery; or
 - ii. acceptance is deemed to have occurred in accordance with clause 4(a) below.
- a) All Goods supplied must be accompanied by a delivery docket detailing the official Purchase Order number, and/or an advance shipping notice (if requested by Peter Mac) the description and quantity of Goods, and any other information required by Peter Mac.
- b) Marking on each item of Goods supplied shall be legible, indelible and irremovable, with the following:
 - i. the manufacturer's name or registered trade mark;
 - ii. the vendor's name or registered trade mark, address and telephone number for service;
 - iii. the name or title of the Goods;
 - iv. the model number or specific name to the particular design; and
 - v. a serial number identifying the individual item of Goods (this requirement applies to each major item of Goods supplied, but not accessories).

4. Inspection and rejection of Goods

- a) If the Goods conform to this Agreement, Peter Mac will promptly issue written notification of acceptance of the Goods. If Peter Mac does not give written notification of acceptance of the Goods within 10 business days of delivery, acceptance of the Goods will be deemed to have occurred on the date of delivery.
- b) If the Goods:
 - i. do not conform with this Agreement; or

- ii. on delivery are damaged, unfit for purpose or not of merchantable quality,

Peter Mac may reject the Goods by giving written notice (including reasons for rejection) to the Supplier within 30 days of delivery. Peter Mac is not obliged to pay for any rejected Goods.

- c) The Supplier must, at its cost, collect and remove any rejected Goods as soon as practicable following notification. If the Supplier fails to collect and remove the rejected Goods within a reasonable time but not more than 7 days after notification in accordance with clause 4(b), Peter Mac may return the Goods to the Supplier at the Supplier's expense or, following further notification, destroy the Goods or otherwise dispose of the Goods in its absolute discretion.

5. Termination

- a) Peter Mac may terminate the Agreement with immediate effect (or with effect from a specified date) by giving notice in writing to the Supplier if the Supplier:
 - i. fails to provide the Goods in accordance with the Agreement;
 - ii. breaches any provision of the Agreement and, where that breach is capable of remedy, fails to remedy the breach within 10 Business Days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
 - iii. breaches any provision of the Agreement that is not capable of remedy;
 - iv. any of its Personnel involved in the supply of the Goods commits fraud, dishonesty or any other serious misconduct;
 - v. commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State; or
 - vi. suffers from an Insolvency Event.
- b) If the Agreement is terminated pursuant to clause 5(a), Peter Mac will pay the Supplier for the Goods delivered in accordance with the Agreement as at the date of termination and Peter Mac will have no other liability to the Supplier in relation to that termination.
- c) When Peter Mac issues a notice under clause 5(a), the Supplier will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of the Agreement.
- d) The Supplier may terminate the Agreement if Peter Mac fails to remedy, to the satisfaction of the Supplier, any breach of this Agreement (which in the reasonable

opinion of the Supplier is able to be remedied) within 14 days after the date on which the Supplier issues Peter Mac a written notice requiring Peter Mac to remedy the breach.

- e) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- f) On termination or expiry the Supplier must immediately, following instructions by Peter Mac, cease using all materials that contain any data or Confidential Information by either destroying the materials or returning the materials at no additional cost to Peter Mac.

6. Warranties and liability

- a) The Supplier warrants to Peter Mac that:
 - i. all Goods are of merchantable quality, of good material and workmanship, reasonably fit for their intended purpose and are free from defects;
 - ii. the Goods comply with the requirements of the Therapeutic Goods Administration (if applicable);
 - iii. the provision of the Goods does not infringe any intellectual property right or other right of a third party and that it has obtained all necessary licences, permits or approvals required for the supply of the Goods;
 - iv. Peter Mac will have the full benefit of any manufacturer's warranty; and where the Supplier is not the manufacturer of the Goods, the Supplier assigns the benefit of such warranties to Peter Mac or Peter Mac's nominee;
 - v. replacement parts of the Goods are and will continue to be available for a period of five years from the date of delivery and that the Supplier will provide at least 12 months' notice of any replacement parts being made obsolete; and
 - vi. it has the right to sell the Goods and the Goods are free from any charge or encumbrance.
- b) The Supplier guarantees the Goods against patent and/or latent defects for 12 months from acceptance or for the period offered by the manufacturer (if longer).
- c) The Supplier must indemnify Peter Mac and each of its Personnel and the Health Services and their officers, employees and agents (Indemnified Party) against any loss, damage, claim, action or expense (including all legal expense) or compensation arising directly from:
 - i. personal injury, including sickness and death;

- ii. property damage;
- iii. any warranty given by the Supplier under this Agreement being incorrect or misleading in any way;
- iv. fraudulent acts or omissions;
- v. wilful misconduct or unlawful act or omission;
- vi. third party claim arising out of a breach of the Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or
- vii. infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third party,

which was caused, or contributed to by, any act or omission by the Supplier or any of its Personnel.

- d) The Supplier's liability to indemnify Peter Mac under clause 6(c) is reduced to the extent that any wilful, unlawful or negligent act or omission by Peter Mac contributed to the loss, damage, claim, action, expense or compensation.

7. Proportionate Liability

- a) To the maximum extent permitted by law:
 - i. the Supplier must not seek to apply the provisions of the Proportionate Liability Legislation in relation to any claim or cause of action by Peter Mac against the Supplier arising under this Agreement;
 - ii. if, notwithstanding clause 7(a)(i) above, the provisions of the Proportionate Liability Legislation are applied in relation to any claim or cause of action by Peter Mac against the Supplier arising under this Agreement, the Supplier indemnifies Peter Mac against any loss or damage Peter Mac or Health Service is not able to recover from the Supplier because of the operation of those provisions, including as a result of the insolvency or incapacity of a concurrent wrongdoer (as defined under the Proportionate Liability Legislation).
- b) The indemnity in clause 7(a)(ii) does not apply to concurrent wrongdoers who are not the Supplier's Personnel.

8. Insurance

- a) The Supplier must obtain and maintain insurance cover, at the time of delivery of the Goods and, if requested by Peter Mac, for a period of up to 7 years after the Goods are delivered (if insurance obtained on a “claims made basis), sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with the Agreement, including product liability insurance to the value specified in the Purchase Order or, if no value is specified, to the value sufficient to cover any loss or costs that may be incurred, and, if applicable, public liability insurance.
- b) Product liability insurance must be maintained for the longer of any warranty period and three years from acceptance of the Goods.
- c) The Supplier must bear the costs of insuring the Goods under a “goods in transit” policy with a reputable insurer under the Insurance Act 1973 (Cth).
- d) On request, the Supplier must, within 10 Business Days, provide Peter Mac with evidence of the currency of any insurance it is required to obtain.

9. Conflicting conditions

- a) If any specifications contained in the Supplier’s quotation, acceptance of order or other documentation are contrary to or differ from the terms and conditions specified in this Order, the terms and conditions specified in this Order will prevail unless the Purchaser Order expressly contemplates otherwise.
- b) Acceptance of this Order and/or performance of this Order will be deemed to be acceptance of these terms and conditions notwithstanding that the acceptance of any documentation of the Supplier may contain a condition similar to a condition in this agreement.
- c) If the Supplier is unable or unwilling to accept any of the terms and conditions contained in this Order, then this Order must be immediately returned to Peter Mac.

10. Variation

These terms and conditions will not be subject to modification or alteration unless they are in writing and signed by a duly authorised representative of Peter Mac.

11. Waiver

A waiver by Peter Mac in respect of a breach of this agreement by the Supplier shall not be deemed to be a waiver in respect of any other breach and the failure of Peter Mac to enforce at any time a provision of this document shall in no way be interpreted as a waiver of such provision.

12. Maintenance

All obligations in respect of maintenance of Goods supplied and claims made under warranties are owed to and must be enforceable by Peter Mac.

13. Compliance and regulations

- a) The Goods must comply with all relevant statutory requirements, e.g., Therapeutic Goods Administration codes of practice, Australian Council of Healthcare Standards, ISO 9000 and Australian Standards. The onus rests with the Supplier to provide evidence of compliance.
- b) All mains or battery powered electrical goods must meet all applicable requirements for the approval and test specifications of SAA standards AS3000, AS3100 and AS3200.1 part 2 plus supplementary standards AS3269, AS3300 and AS3551 and any other relevant Australian Standard. Unless otherwise agreed in writing all electrical and/or electro medical goods must be supplied with comprehensive technical documentation, including relevant operating manuals, electrical circuits, schematic diagrams and service manuals.
- c) If the Goods being supplied are toxic, poisonous or in any other dangerous form, the requirements of the Australian Code of Transport of Dangerous Goods and IATA restricted articles regulations shall apply.
- d) The Supplier must act consistently with the Victorian Government's Supplier Code of Conduct.
- e) The Supplier must comply with all applicable Laws and all relevant standards of the Standards Association of Australia and all other applicable standards.

14. Modern Slavery Act

- a) The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods.
- b) If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Order, the Supplier must as soon as reasonably practicable take action to remove these practices from the operations and supply chains.
- c) If requested by Peter Mac, with at least twenty (20) Business Days' notice, the Supplier must respond to any reasonable requests for information (including any supplier survey) provided by Peter Mac relating to its compliance under clause 14(a).

d) Where:

- i. Either the Supplier or Peter Mac has identified:
 - A. Significant or persistent Modern Slavery risks; or
 - B. Alleged Modern Slavery practice(s),

in the operations and supply chains used in the performance of the Order; and

- ii. Peter Mac has made reasonable efforts to engage the Supplier to take action to mitigate the risks to remove the practice(s); and
- iii. The Supplier fails to take action to mitigate those risks or remove those practice(s)

Peter Mac reserves the right to terminate the Order in accordance with clause 5(a).

15. Audit

Peter Mac will have the right, after giving no less than 5 Business Days' written notice at any time during business hours, to inspect and/or audit the accounts and records of the Supplier relating to the supply of Goods, including, but not limited to matters relevant to the Order, including compliance with the Supplier Code of Conduct and specifications. Peter Mac will be entitled to take copies of or extracts from any such records for the purpose of conducting the audit.

16. Access

- a) When entering the premises of Peter Mac, the Supplier must (and must ensure that its Personnel):
 - i. use reasonable endeavours to protect people and property, prevent nuisance and act in a safe and lawful manner; and
 - ii. comply with the safety standards, policies and site requirements of Peter Mac (as notified to the Supplier).
- b) The Supplier acknowledges that if it (or any of its Personnel) enters Peter Mac's premises, it does so at the Supplier's own risk.

17. Documentation

- a) All equipment must be supplied with two copies of full operating instructions in English together with all necessary instructions for routine maintenance and service

so as to ensure safe and effective use of the equipment, including electrical circuits, schematic diagrams and service manuals.

- b) If a maintenance or warranty period is to be provided by the Supplier, details must be provided. If the equipment must be commissioned on site by the Suppliers to give effect to the warranty, this must be stated.
- c) If the equipment being supplied must be installed, the Supplier must provide all necessary details to allow that installation to occur and must specify what part(s) (if any) of the installation is included in the quoted price.
- d) All Goods must be supplied with Material Safety Data Sheets (where appropriate).

18. Price

- a) The Unit Price is fixed and inclusive of all taxes (excluding GST).
- b) The Supplier may not charge Peter Mac any additional fee or amount for packaging, transport, insurance, loading, unloading, storage or any other costs incurred by the Supplier in supplying or delivering the Goods to Peter Mac.

19. GST

Unless otherwise expressly stated, the Price and any other sums payable or consideration to be provided under or in accordance with the Purchase Order or these terms and conditions are exclusive of GST (as defined under the GST Act).

20. Terms of payment

- a) Subject to compliance by the Supplier with these terms and conditions, Peter Mac must pay the price stated on this Order.
- b) Payments must be within 30 days following receipt of a correctly rendered and itemised invoice.
- c) All delivery dockets and invoices must contain the following basic information:
 - i. The vendor's name and address;
 - ii. The item's detailed specification;
 - iii. The unit price, total price and any discount; and
 - iv. The Purchase Order reference number and date.

- d) If Peter Mac is not satisfied that the Goods have been provided in accordance with this Order, Peter Mac may, after giving the Supplier notice of the reasons why it is not satisfied, refuse to pay that part of the invoice until the Goods have been provided to its satisfaction.

21. Confidentiality, privacy and data protection

- a) The Supplier must not, and must ensure that its Personnel do not, disclose to any person any Confidential Information, without the prior approval of Peter Mac.
- b) The Supplier must ensure that those of its Personnel engaged by to provide the Goods comply with privacy, health records or similar legislation which Peter Mac must comply with. The Supplier must not do anything, or fail to do anything, which would cause Peter Mac to be in breach of its own privacy and confidentiality obligations.
- c) The Supplier must not, without the consent of Peter Mac, advertise or publish the fact that the Supplier is supplying Goods under this Order.
- d) The Supplier acknowledges that Peter Mac may be required to disclose information under the Freedom of Information Act 1982 (Vic) or in accordance with a request made by the Parliament, the Minister for Health, the Governor, Cabinet, a Parliamentary committee or integrity body. The Supplier will provide all reasonable assistance to Peter Mac in responding to such a request.
- e) The obligations imposed by this clause will survive the expiry or termination of this Order.

22. Intellectual property

The Supplier irrevocably and unconditionally grants to Peter Mac a non-exclusive, perpetual, royalty-free, worldwide and transferable licence (including the right to sub-license) to use any Intellectual Property Rights in relation to any Goods supplied to the extent necessary to allow Peter Mac the full use and enjoyment of those Goods and the Supplier must, upon request by Peter Mac, do all things as may be necessary (including executing any documents) to give full effect to such rights.

23. Recalls

- a) The Supplier must manage all recalls of Therapeutic Goods in accordance with the requirements of the Uniform Recall Procedure for Therapeutic Goods (URPTG) (as amended from time to time).
- b) All communications, including recall notices, required under clause 23(a) must be sent to Peter Mac and the relevant Health Service.

- c) All recalls and/or hazard alerts must be completed by the Supplier using GS1 Recall or Recall Health (as the case may be).

24. Assignment and sub-contracting

The Supplier may only assign or sub-contract any of its rights or obligations under this Order with Peter Mac's prior written consent. Further, the Supplier agrees to take all reasonable steps to ensure that its Personnel comply with the obligations set out in this Order. The Supplier will remain responsible and liable for all approved subcontractors notwithstanding the consent provided by Peter Mac. The Supplier must ensure that each approved subcontractor complies with the relevant terms of this Order.

25. Relationship

This Order does not create an employment, partnership or agency relationship between the Supplier and Peter Mac. The Supplier does not, and must not represent itself to have, any authority to bind Peter Mac.

26. Severability of Terms

Any term of the Order which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of the Order is not affected.

27. Governing law

These terms and conditions shall be governed by and construed in accordance with the laws of the State of Victoria and any proceeding shall be heard at a location in Victoria deemed appropriate by Peter Mac.

28. Interpretation

In these conditions, unless the context otherwise requires:

- a) **Agreement** means the agreement for the supply of the Goods consisting of these terms and conditions for the supply of Goods and the Purchase Order.
- b) **Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, Peter Mac, including any information designated by Peter Mac as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information which:
 - i. is in or which subsequently enters the public domain, other than as a result of a breach of an obligation of confidentiality;

- ii. the Supplier can demonstrate was in its possession prior to the date of the Agreement;
 - iii. the Supplier can demonstrate was developed by it independently of any disclosures previously made by Peter Mac;
 - iv. is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with Peter Mac or otherwise prohibited from disclosing the information to the Supplier; or
 - v. is required to be disclosed pursuant to Law, court order or other legal process.
- c) **Goods** means the goods or Therapeutic Goods, and may include associated training, education and case support, specified in the Purchase Order and as provided under this Agreement.
- d) **Government Agency** means any government or any government, semi government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes the Victorian Department of Health, the Therapeutic Goods Administration and HealthShare Victoria.
- e) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- f) **Laws** means any constitutional provisions, treaties, decrees, conventions, statutes, regulations, ordinances or by-laws, requirement, notice, order, direction, recommendation, stipulation or similar notification received from or given by or behalf of any Government Agency.
- g) **Modern Slavery** has the same meaning as it has in the Modern Slavery Act 2018 (Cth).
- h) **Personnel** includes the officers, employees, agents, contractors and sub-contractors of a party to this agreement.
- i) **Order** means the agreement between the Supplier and Peter Mac, which includes these terms and conditions.
- j) **Intellectual Property Rights** means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- k) **Patient** means any person treated or attended to, in any way, by Peter Mac.

- l) **Purchase Order** means any form of order or acceptance from Peter Mac for the supply of the Goods which incorporates these terms and conditions.
- m) **Supplier** means the entity supplying the goods in the Order.
- n) **Therapeutic Goods** has the same meaning as in the Therapeutic Goods Act 1989 (Cth).
- o) **Unit Price** means the price per item of each of the Goods, as specified in the Purchase Order.