

TERMS AND CONDITIONS

In these terms and conditions, "Supplier" means the Supplier detailed in this Purchase Order and "Purchaser" means Allity Pty Limited ABN 32 143 413 638. Any reference to:

1. Supply

1.1 The Supplier must supply the Goods to the Purchaser at the Point of Delivery and by the Date for Delivery for the Price.

1.2 "Goods" includes all goods described in the Details, and all documents or written instructions needed by the Purchaser for the proper use of the Goods and all other things which can reasonably be inferred from the description of the Goods in the Details.

1.3 The Supplier is taken to have carefully examined all information furnished by the Purchaser relating to the supply of the Goods and to have fully satisfied itself of all conditions, risks and other circumstances which might affect the supply of the Goods including conditions at the Point of Delivery, and to have made due allowance for these in the Price.

2. Inspection, rejection and quality assurance

2.1 The Supplier must test the Goods (if applicable) at its own cost to ensure compliance with this Purchase Order.

2.2 The Purchaser may at any time on reasonable notice enter the premises where the Goods are manufactured to inspect, examine or test the Goods.

2.3 No inspection, examination or testing by the Purchaser relieves the Supplier of its obligations under the Purchase Order.

2.4 If the inspection discloses that the Goods are defective or otherwise do not conform with the Purchase Order, the Purchaser may deliver to the Supplier a notice requiring the defect or breach to be remedied within the reasonable time identified in the notice and the Supplier must comply with that notice.

2.5 If the Supplier does not remedy the defect or other breach within the time identified in the notice given under clause 2.4, the Purchaser may, by notice in writing addressed to the Supplier, terminate the Purchase Order.

2.6 The Supplier must ensure that the Goods are manufactured in accordance with any specific quality assurance requirement set out in the Details. Where none are specified, the Goods must comply with the best standards applicable to goods of that type.

3. Price

3.1 The Price is fixed and will not be subject to adjustment for rise and fall or exchange rate variations.

3.2 The Supplier may deliver to the Purchaser an invoice in taxable form for Goods delivered under the Purchase Order. Unless specified otherwise on the front of the Purchase Order, the Purchaser must pay the Supplier the amount determined by the Purchaser as the appropriate proportion (having regard to the provisions of the Purchase Order and the proportion of the Goods delivered) of the Price for the Goods by the end of the month assuming the invoice is received by the Supplier by the 4th of that month.

3.3 All invoices must be itemised and be in a form which clearly indicates any GST component already paid by the Supplier, for which the Purchaser is entitled to claim an input tax credit.

3.4 The Price includes all taxes, levies and fees (including goods and services tax) which are payable in relation to the supply and delivery of the Goods.

3.5 The Price will not be varied for any reason except where expressly agreed in writing and signed by an authorised representative of the Purchaser.

3.6 The Purchaser may, by notice in writing addressed to the Supplier and signed by an authorised representative of the Purchaser, vary the quantity or quality or description of the Goods, the Date for Delivery or any aspect of the supply of Goods. The Price will be altered by a reasonable amount determined by the Purchaser for that variation.

3.7 The Purchaser may deduct from any amount owing to the Supplier under the Purchase Order, including any part payment of the Price, any amount which the Purchaser asserts is or may become payable by the Supplier to the Purchaser including amounts by way of liquidated or unliquidated damages.

3.8 The Purchaser may make payment by cheque, direct credit or cash payment or in any manner otherwise agreed in writing by the parties.

3.9 All payments will be on account only and will not be an admission that the Goods comply with this Purchase Order.

4. Time and Delivery

4.1 The Supplier must deliver the Goods to the Purchaser at the Point of Delivery on the Date for Delivery during the Delivery Hours. The Date for Delivery is of the essence in the Purchase Order.

4.2 The Purchaser is not obliged to accept early delivery of the Goods. If the Purchaser does not accept early delivery of the Goods, the Supplier must, at its own cost, hold the Goods in store until the Date for Delivery.

4.3 The Supplier must notify the Purchaser immediately upon the Supplier becoming aware that it will not be able to deliver the Goods on the Date for Delivery.

4.4 The Date for Delivery may only be extended by the Purchaser to the extent that the Supplier is delayed by an act, omission or default of the Purchaser or an agent or employee of the Purchaser.

4.5 The period of an extension to the Date for Delivery will be a reasonable time, having regard to the cause of the delay and the steps the Supplier could reasonably have taken to mitigate the effect of the delay.

4.6 The cost of carriage of the Goods to the Point of Delivery, and all packing, loading and unloading is included in the Price and must be borne by the Supplier.

4.7 If the Goods are not delivered to the Point of Delivery by the Date for Delivery then the Supplier will be in breach of this Purchase Order and the Purchaser may, without prejudice to its other rights, cancel the whole or part of the Purchase Order.

4.8 The Supplier must comply with all safety requirements of the Purchaser relating to the Supplier's conduct at the Point of Delivery. The Supplier must not allow any of its employees, contractors, agents or other personnel to have unsupervised access to any aged care residents at the Point of Delivery unless the Supplier has first provided the Purchaser with a copy of a National Criminal History Record Check (Police Check) as required under the Commonwealth Aged Care legislation including the Accountability Principles 1998 (Cth) and the Records Principles 1997 (Cth).

4.9 If the Purchaser or any of its representatives signs a delivery docket or other document required by the Supplier to acknowledge delivery, the Purchaser will not be taken to have accepted the Goods as being in accordance with this Purchase Order (whether as to quality or quantity). This applies notwithstanding any terms and conditions on any such acknowledgement of delivery.

4.10 The Supplier must deliver all applicable material safety data sheets (MSDS) with the Goods.

5. Delivery Program

5.1 If requested in the Purchase Order, the Supplier must, within seven days of a written request by the Purchaser, provide the Purchaser with a program which identifies all major milestones in the manufacture and delivery of the Goods.

5.2 The supply of a program does not affect the obligation of the Supplier to deliver the Goods by the Date for Delivery.

6. Risk and Title

6.1 Property and title in the Goods will pass to the Purchaser on payment of the Price for the Goods.

6.2 Risk in Goods will pass to the Purchaser upon delivery of the Goods to the Point of Delivery. The Goods will be at the risk of the Supplier up to the Point of Delivery even if delivery is delayed through the fault of the Purchaser.

6.3 The Supplier must insure the Goods against all risks of loss, damage and depreciation for the full replacement value until delivery of the Goods to the Point of Delivery.

6.4 The Supplier indemnifies the Purchaser and its officers, employees agents and contractors against any action, liability, costs, damages or expenses suffered or incurred by the Purchaser as a consequence of any act or omission by the Supplier, its contractors, employees or agents (including supply of defective Goods).

6.5 Prior to commencing any work to fulfil the Purchase Order and before entering the Purchaser's premises or the Point of Delivery, the Supplier must effect the following insurance policies with reputable insurers:

- (a) workers compensation to the extent required at law; and
- (b) Public liability insurance to an amount not less than the amount identified in the Purchase Order (and if nothing is stated \$20,000,000).

6.6 Where requested by the Purchaser, the Supplier must immediately provide certificates of currency for the policies effected under clauses 6.3 and 6.5.

7. Return of Goods

7.1 If, within a reasonable time after delivery, it is apparent to the Purchaser that the Goods or any part of the Goods are not in accordance with the Purchase Order, the Purchaser may return those Goods to the Supplier.

7.2 If the Purchaser exercises its power under clause 7.1, the Supplier must pay the Purchaser:

- (a) any amounts paid by the Purchaser for the Goods so returned; and
- (b) any costs incurred or losses suffered by the Purchaser in connection with the delivery or return of those Goods.

8. Warranties

8.1 The Supplier warrants that the Goods will:

- (a) at delivery, be new and in good order and condition;
- (b) comply precisely with the description in the Purchase Order (as varied under clause 3.6);
- (c) comply with any relevant patterns or specifications;
- (d) be of good merchantable quality;
- (e) be fit for the purpose made known to the Supplier by the Purchaser or, if none was made known to the Supplier, fit for the purpose for which goods of that kind are ordinarily used.
- (f) comply with any other warranties or guarantees contained in the Purchase Order or ordinarily supplied by the Supplier and manufacturer of the Goods;
- (g) comply with all applicable Australian standards;
- (h) comply with the provisions of any legislation applicable to them;
- (i) at delivery, be free from all charges, liens and encumbrances.

8.2 The warranties in clause 8.1 are in addition to any warranties which are or may be implied under *Australian Consumer Law* which will form part of this agreement as if the Purchaser was a consumer within the meaning of the *Australian Consumer Law*.

8.3 The Supplier warrants that it has the necessary skills, resources and experience to successfully supply the Goods in accordance with this Purchase Order.

8.4 The Supplier warrants that it has all intellectual property rights (including any patents, trade marks and copyright) necessary to supply Goods in accordance with the Purchase Order and indemnifies the Purchaser against any loss, cost, damage or expense incurred by the Purchaser as a consequence of any claim by a third party that it has a right to any intellectual property right in the Goods.

8.5 The Supplier warrants to the Purchaser that it is the legal and beneficial owner of the Goods supplied by it under the Purchase Order.

9. Defective Goods

9.1 If, at any time (whether or not a reasonable time has passed for inspection after delivery of the Goods), the Purchaser discovers that the Goods do not comply with any warranty given under clause 8.1, the Purchaser may (without limiting any other right available to it):

- (a) rectify the Goods or have the Goods rectified and the cost, loss, damage and expense suffered or incurred by the Purchaser will be a debt due from the Supplier to the Purchaser; or
- (b) deliver to the Supplier a notice under clause 9.2.

9.2 The Supplier must, if the Purchaser so requires by notice in writing and at the cost of the Supplier, either (i) remove the Goods, rectify the defects and return the Goods to the Purchaser; or (ii) replace the Goods.

10. Confidentiality

10.1 The Purchase Order must be treated as confidential and must not be disclosed to any person, firm or Purchaser or used for advertisement, display or publication without the prior written consent of the Purchaser.

11. Drawings and Tools

11.1 All tools, patterns, materials, drawings, specifications and other data provided by the Purchaser in connection with the Purchase Order

- (a) remain the property of the Purchaser (except that the Supplier is responsible for making good any damage done to them while they are in the possession of the Supplier);
- (b) must be used solely for the purpose of the Purchase Order;
- (c) must not be passed to or divulged to any third party except with the express consent of the Purchaser in writing; and
- (d) must be returned by the Supplier to the Purchaser on request.

12. Termination

12.1 Unless otherwise agreed, the Purchaser may suspend all or part of the supply of the Goods at any time and for any period of time by notice in writing to the Supplier. The Supplier must comply with the notice and recommence supply when notified by the Purchaser. The Supplier will not be entitled to any additional payment arising as a result of the suspension.

12.2 The Purchaser may terminate this Purchase Order at any time by giving notice in writing to the Supplier. Subject to any set off or deduction rights the Purchaser may have, on termination the Purchaser's only obligation will be to pay the Supplier for Goods which have been delivered in accordance with the Purchase Order prior to the date of termination.

13. Miscellaneous

13.1 No waiver by the Purchaser of a breach of the Purchase Order by the Supplier constitutes a waiver for any subsequent or continuing breach by the Supplier.

13.2 This Purchase Order is governed by the laws of New South Wales and the parties submit to the jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts.

13.3 The Supplier must not, without the prior written consent of the Purchaser, assign, transfer otherwise deal with its interest under the Purchase Order.