

WORKS TERMS AND CONDITIONS

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this agreement:

"Agreement" means the Purchase Order, all schedules, quotes, tenders and other attachments to it, and these terms and conditions.

"Contract Price" means the amount(s) payable for the Services as set out in the Purchase Order (as adjusted from time to time in accordance with this Agreement).

"Force Majeure" means an act, event or cause (other than lack of funds) which is beyond the reasonable control of the concerned party, including: an act of God, peril of the sea, war (declared or undeclared), sabotage, riot, blockade, insurrection, civil commotion, martial law, fire, lighting, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty, epidemic, quarantine, radiation or radioactive contamination, action or inaction of a government or other competent authority, or breakdown of plant, machinery or equipment or shortages of labour, transportation, fuel, power or plant, machinery, equipment or material.

"GST" means a goods and services tax or similar value added tax levied or imposed under the GST Act or otherwise on a supply of services.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Home" means an Allity aged care home as identified in the Purchase Order.

"Personnel" means, in relation to a Party, the Party's officers, employees, contractors, agents and/or other representatives.

"Service Provider" means the supplier and its Personnel as identified in the Purchase Order.

"Services" means the work or services the Service Provider is required to perform under this Agreement.

2. RELATIONSHIP OF THE PARTIES

The Service Provider is an independent contractor and nothing in this Agreement renders or deems the Service Provider or any of its Personnel to be an employee, agent or partner of Allity.

3. SERVICES

3.1 The Service Provider agrees to provide the Services at the Home in a proper and professional manner to the standard expected of a competent contractor, and to use materials that comply with this Agreement and which are of good quality, fit for the purpose for which they are used and which are new, unless this Agreement expressly provides otherwise.

3.2 The Service Provider must ensure that the provision of the Services at all times complies with the conditions of this Agreement, the requirements of any governmental agency and any applicable laws, legislation, regulations, including relevant building standards or codes of practice.

3.3 Allity will provide the Service Provider with access to the Home as required to perform the Services, however the Service Provider must use its best endeavours to organise and arrange the provision of the Services so as to cause minimum inconvenience and disruption to Allity, including limiting noisy works between the hours of 8:00am – 12pm and from 1:00pm – 5:00pm. Prior notice of noisy works must be agreed with Allity.

3.4 The Service Provider must ensure that its Personnel are appropriately dressed to undertake their work in a safe manner and that they comply with all construction industry standard PPE requirements.

3.5 Prior to any works commencing at the Home, the Service Provider must provide Allity with a Safe Work Method Statement together with a site management plan and contact list (phone numbers and email addresses) of all Personnel who will access to the Home to perform the Services.

3.6 The Service Provider must ensure that its Personnel comply with all of Allity's reasonable directions and procedures relating to risk management, emergency procedures, security, quality management, occupational health and safety, and access to the Home, including induction to Allity's systems (if applicable). Allity may deny access to the Home to the Service Provider's Personnel who do not comply with the security or occupational health and safety procedures advised by Allity.

3.7 The Service Provider will be responsible for the care of the Services until completion and will promptly make good loss or damage to the Services caused by any neglect, act or default of the Service provider or the Service Provider's Personnel.

3.8 The Service Provider agrees to support the quality and accreditation program at the Home. The Service Provider must keep the works area clean and tidy at all times and remove rubbish and surplus material on a daily basis.

3.9 The Service Provider must not allow any of its Personnel to have unsupervised access to any aged care residents at any Allity premises unless the Service Provider has a current National Criminal History Record Check ("Police Check") for each of those Personnel, and agrees to provide to Allity in writing at such intervals as Allity may reasonably require details of the date of each such Police Check and confirmation that none of the Personnel is precluded by their Police Check from working in aged care, in accordance with the Aged Care Act 1997 (Cth).

4. CONTRACT PRICE AND INVOICES

4.1 The Contract price is fixed and will not be subject to any adjustment for any variations except for an approved variation under clause 4.8.

4.2 All claims for payment must be accompanied by a Statutory Declaration confirming that all subcontractors have been paid all moneys due and payable to them in respect of Services provided under this Agreement.

4.3 Allity will pay the Contract Price within 21 days of receipt of a correctly rendered tax invoice and in accordance with the payment terms set out in the Purchase Order.

4.4 The Service Provider must provide all necessary documentation e.g. as built drawings, warranty details and compliance certificates prior to final payment being made by Allity.

4.5 All invoices must be provided in taxable form and contain information required by Allity from time to time, including but not limited to separate costing for materials, labour and delivery (if applicable).

4.6 All invoices must comply with the GST Act.

4.7 Except as expressly set out in the Agreement, the Contract Price includes all costs and expenses relating to the Services and the Service Provider's performance of its obligations under this Agreement, and Allity is not required to pay any incidental, administration or office expenses that the Service Provider or its Personnel incur in providing the Services, or any amount for Services provided or costs incurred by Service Provider, prior to entry into this Agreement.

4.8 The Contract Price may be varied by changes to the Services but only when:

- (a) the party requiring the variation gives the other party a notice describing the variation;
- (b) the Service Provider provides a written notice of variation that contains an estimate of the value of the variation and when the payment or credit is to be made; and
- (c) the notice of variation is signed by both parties.

4.9 Notwithstanding any other provisions of this Agreement, if Allity disputes the amount of the Service Provider's invoice or if the Services have not been performed to Allity's satisfaction, Allity is not obliged to pay the disputed invoice until the dispute has been resolved with the Service Provider. The Service Provider may not suspend, cancel or withdraw the supply of the Services in whole or in part if an invoice is disputed.

5. GST

5.1 Except where this Agreement specifies otherwise, an amount payable by a party under this agreement in respect of a taxable supply by the other party does not include GST.

5.2 Subject to clause 5.3, the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the amount of GST payable in respect of the supply.

5.3 A party is not obliged, under clause 5.3, to pay an amount for GST in respect of a taxable supply to it, until provided with a valid tax invoice for the supply.

6. INDEMNITY

6.1 The Service Provider indemnifies Allity against liability, loss, cost, damage or expense suffered or incurred by Allity, directly or indirectly, as a consequence of any act or omission by the Service Provider or its Personnel, except to the extent that the liability, loss, cost, damage or expense was caused or contributed to by the negligence or contractual breach of Allity.

7. WARRANTIES

7.1 The Service Provider represents and warrants that it has the necessary skills, resources and experience to properly supply the Services in accordance with the Purchase Order.

7.2 The Service Provider warrants that it has the power to enter into and perform its obligations under this Agreement, that the Service Provider or its Personnel has all necessary licences, permits and consents to enter into and comply with its obligations under this Agreement (including a valid Construction Industry White Care (where applicable)), and that the provision of the Services by the Service Provider will not be in breach of any obligation owed to any third party nor will it infringe the intellectual property rights of any third party.

7.3 The Service Provider acknowledges that Allity enters into this Agreement in reliance on the representations, warranties and promises made by the Service Provider in this Agreement.

7.4 In relation to any materials supplied by the Service Provider in the provision of the Services ("Materials"), the Service Provider warrants in relation to the Materials that they will:

- (a) be new and in good order and condition;
- (b) comply precisely with the description in the Purchase Order (if applicable);
- (c) comply with any relevant patterns or specifications;
- (d) be of good merchantable quality;
- (e) be fit for the purpose made known to the Service Provider by Allity or, if none was made known to the Service Provider, fit for the purpose for which Materials of that kind are ordinarily used;
- (f) comply with any other warranties or guarantees ordinarily supplied by the Service Provider and/or manufacturer of the Materials;
- (g) comply with all applicable Australian standards;
- (h) comply with the provisions of any legislation applicable to them;
- (i) on use, to be free from all charges, liens and encumbrances.

7.5 The warranties provided in this clause 7 are in addition to any warranties which are or may be implied under the Australian Consumer Law which will form part of this Agreement as if Allity was a consumer within the meaning of the *Australian Consumer Law*.

8. WARRANTY FOR BUILDING DEFECTS

8.1 The Service Provider warrants that it will promptly make good any defects or omissions in the Services that become apparent within 12 months of the date of completion at the Service Provider's expense.

8.2 If there are any such defects or omissions then Allity will give the Service Provider written notice to make good such defects omissions as soon as possible and will give the Service Provider reasonable access for that purpose, and with all other terms of clause 3 of this Agreement to apply to the provision of those make good works.

9. SUSPENSION OF SERVICES

9.1 Unless otherwise agreed, Allity may suspend all or part of the provision of the Services at any time and for any period of time by notice in writing to the Service Provider. The Service Provider must comply with the notice and recommence provision of Services when notified by Allity. The Service Provider will only be entitled to additional payment arising as a result of the suspension on reasonable grounds and only by agreement in writing with Allity.

10. TERMINATION

10.1 Allity may terminate this Agreement at any time by giving notice in writing to the Service Provider. Subject to any set off or deduction rights that Allity may have, on termination Allity's only obligation will be to pay the Service Provider for Services that have been provided in accordance with the Purchase Order prior to the date of termination.

10.2 Either party may terminate the Agreement if a Force Majeure event occurs and subsists for more than 14 days in accordance with clause 11.

11. FORCE MAJEURE

11.1 A party will not be liable for any failure or delay in the performance of its obligations under this agreement to the extent that such failure or delay is caused, directly or indirectly, by a Force Majeure event, provided:

- (a) such failure or delay could not have been prevented by reasonable precautions, or could not have reasonably been circumvented by the non-performing party by means of alternate sources, workarounds or other means; and
- (b) the non-performing party otherwise complies with its obligations under this clause.

11.2 If a party's performance of its obligations is affected by a Force Majeure event, it must:

- (a) promptly advise the other party of the details of the Force Majeure event and the likely effect on that non-performing party's ability to perform its obligations under this agreement; and
- (b) take all steps reasonably necessary to recommence performance and minimise delay caused by the Force Majeure event, including by means of alternate sources, workarounds or other means.

11.3 If the delay caused by the Force Majeure event extends for more than 14 days, Allity has the right to terminate this Agreement with immediate effect.

12. INSURANCE

12.1 Prior to commencing the Services, and before entering any Allity premises, the Service Provider must effect with a reputable and financially sound insurer and maintain during the performance of this Agreement the following insurances:

- (a) workers compensation to the extent required at law;
- (b) public liability insurance to an amount not less than \$20,000,000; and
- (c) contract works insurance on reasonable terms and for an amount to cover the Service Provider's liability for and in relation to the Services under this Agreement.

12.2 Service Provider must on request immediately provide copies of the current certificate/s of currency or other evidence of the above insurances to Allity.

13. CONFIDENTIALITY

13.1 This Agreement must be treated as confidential and must not be disclosed to any person, company or other supplier, or otherwise used for advertisement, display or publication without the prior written consent of Allity.

14. MISCELLANEOUS

14.1 This Agreement may not be varied except in writing signed by each party.

14.2 No waiver by Allity of a breach of the Agreement by the Service Provider constitutes a waiver for any subsequent or continuing breach by the Service Provider.

14.3 This Agreement 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.

14.4 The Service Provider will not subcontract, transfer or assign its interest under this Agreement except with the written consent of Allity.