

## Cabrini – Terms and Conditions of Supply (B2B)

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### YOU SHOULD BE AWARE OF SEVERAL KEY TERMS

This summary is designed to assist you by disclosing certain terms that may affect you. However, it is not a substitute for reading and understanding the Terms, and it is not intended to substitute, expand or amend the Terms.

- **Delivery of Goods:** to the extent permitted by law we are not responsible to you or any person claiming through you for any loss or damage to Goods once those Goods have left our premises.
- **Limitation of liability:** To the extent permitted by law:
  - we exclude all responsibility and liability for indirect or consequential loss arising from or in connection with the supply of the Goods and/or Services; and
  - **our liability for a breach of warranty is limited to:**
    - **for goods – repairing or replacing the goods or paying the cost of having those goods repaired or replaced; and**
    - **for services – re-supplying the services or paying the cost of having the services re-supplied;**
  - our liability under these Terms is otherwise limited to the amount paid by you for the Goods and/or Services.

### 1. Application

These Terms and Conditions of Supply, together with the Purchase Order (if any), form the agreement between you and Cabrini Health Limited (**we, us**) in relation to the supply of the Goods and/or the supply of the Services (as the case may be) (**Terms**).

Capitalised terms have the meanings given to them in section 23 below.

### 2. Term

These Terms commence on the date specified in the Purchase Order or for walk-in customers, on the date you accept the quote for Services, and continue until after all Services have been completed, the end of the last Hire Period, or after all Goods have been delivered, whichever occurs later, unless terminated earlier in accordance with these Terms.

## Part A – Services

### 3. Application

This Part A applies where we are supplying Services to you.

### 4. Supply obligations

#### 4.1 Services

- (a) Subject to section 4.2, we will supply each Service to you.
- (b) We warrant that:
  - (i) we will perform the Services to a professional standard; and
  - (ii) appropriately qualified personnel will perform the Services.

#### 4.2 Estimates only

- (a) Any times stated by us for the completion of the Services are estimates only.
- (b) To the maximum extent permitted by law, we will have no liability whatsoever if the provision of the Services is delayed for any reason (including due to circumstances beyond our control). In no circumstances will delay in delivery constitute, or be deemed to be, a breach of these Terms.

### 5. Security and access

If applicable, you must provide us with reasonable access to your premises and facilities for the purpose of enabling us to perform the Services.

## **Part B – Supply of Goods**

### **6. Application**

This Part B applies where we are supplying Goods to you.

### **7. Supply obligations**

#### **7.1 Goods**

- (a) We will supply the Goods to you in accordance with these Terms and as set out in the Purchase Order.
- (b) We warrant that we will supply the Goods in substantial conformity with the Purchase Order.

#### **7.2 Estimates only**

- (a) Any times stated by us for the delivery of the Goods are estimates only.
- (b) To the maximum extent permitted by law, we will have no liability whatsoever if the delivery of the Goods is delayed for any reason (including due to circumstances beyond our control). In no circumstances will delay in delivery constitute, or be deemed to be, a breach of these Terms.

#### **7.3 Instalments**

- (a) We may, at our discretion, deliver the Goods to you in any number of instalments, unless otherwise agreed in writing between us.
- (b) If we deliver any of the Goods by instalments, and any one of those instalments is defective for any reason, the defective instalment is a severable breach that, subject to section 17, gives rise only to a claim for replacement or repair of the defective instalment.

### **8. Loss or damage in transit**

Although we use appropriate care when delivering Goods, we are not responsible to you or any person claiming through you, including in negligence, for any loss or damage to Goods once those Goods have left our premises (however caused and whether or not we are legally responsible for any person who caused or contributed to that loss or damage), except as required by law.

### **9. Rights in relation to the Goods**

#### **9.1 Title**

We both agree that title in all Goods remains with us until we have been paid in full for all Goods.

#### **9.2 Your obligations**

In respect of any Goods while they remain our property, you must:

- (a) not dispose of the Goods or create or allow to be created any mortgage, lien, charge, pledge, claim or other encumbrance or third party interest over or in respect of the Goods, or agree to do any of those things;
- (b) not (without our prior written consent) supply any of the Goods to any person outside of your ordinary or usual course of business; and
- (c) not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

### **10. PPSA**

- (a) You acknowledge these Terms constitute a security agreement for the purposes of the PPSA. A security interest is taken in all Goods previously supplied by us to you (if any) and all Goods that may be supplied in the future by us to you and any proceeds referable thereto, securing the performance by you of your obligations to us under these Terms or otherwise.
- (b) You must not, without our prior consent, allow:
  - (i) the Goods to become mixed or commingled with any other property;
  - (ii) the Goods to become an accession to any other property; or
  - (iii) any other property to become an accession to the Goods.
- (c) You consent to us effecting and maintaining registrations in respect of security interests (including purchase money security interests) on the PPSR (as defined in the PPSA) contemplated by these Terms. You must pay all costs incurred by us in connection with the registration of a financing statement or financing change statement (each as defined in the PPSA) in respect of a security interest granted by you in favour of us.
- (d) You must immediately notify us if any other person attempts to enforce a security interest in the Goods.
- (e) You must assist us to complete the registration of any financing statement in respect of the Goods, and will do all things and provide all information necessary to enable us to perfect our security interest in the Goods and complete any financing change statement.
- (f) Unless otherwise agreed, payments received by us from or on your behalf must be applied in accordance with section 14(6)(c)(i) to (iii) of the PPSA.

- (g) To the extent permitted by law, to the extent they otherwise would have applied to the enforcement of a security interest in the Goods, the parties contract out of sections 125, 132(3)(d), 142, 143 and (if permitted by section 115(7)) Part 4.3 (other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)) of the PPSA. You irrevocably waive any rights under sections 95, 121(4), 130, 132(4) and 135 of the PPSA.
- (h) You agree that you irrevocably waive any rights it may have to receive a verification statement (as defined in the PPSA) in respect of a security interest in the Goods.
- (i) The parties agree that neither of them will disclose, or authorise the disclosure, to any person of any information of the kind described in section 275(1) of the PPSA, except to the extent (if any) required by law.

## Part C – General

### 11. Compliance with law

Each party must comply with all laws applicable to that party in connection with these Terms.

### 12. Price and expenses

#### 12.1 Price

You must pay us the Price for the Services and/or the Goods (as applicable) in full and upfront.

#### 12.2 Expenses

- (a) The Price specified in the Purchase Order or quote (if any) may include an estimate for out-of-pocket expenses incurred by us in connection with the supply of the Goods and/or Services.
- (b) Subject to paragraph (c), you must reimburse us for any additional out-of-pocket expenses incurred by us in connection with the supply of the Goods and/or Services if our expenses exceed the estimate specified in the Purchase Order or quote by 30% or more. We will issue you an invoice for these expenses and you must pay the invoice within 7 days of the issue date.
- (c) We will inform you and seek your consent (such consent not to be unreasonably withheld or delayed) before we incur any additional out-of-pocket expenses (such as travel fees and courier charges) under paragraph (b).

#### 12.3 No set-off

You acknowledge that you are not entitled to set-off any amounts that you are otherwise legally entitled to recover from us under these Terms or at law against any amounts due by you to us.

### 13. GST

#### 13.1 GST inclusive amounts

For the purposes of these Terms where the expression **GST inclusive** is used in relation to an amount payable or other consideration to be provided for a supply under these Terms, the amount or consideration will not be increased on account of any GST payable on that supply.

#### 13.2 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with these Terms unless specifically described in these Terms, the Purchase Order or quote as GST inclusive, does not include an amount on account of GST.

#### 13.3 Gross up of consideration

Despite any other provision in these Terms, if a party (**GST Supplier**) makes a supply under or in connection with these Terms on which GST is imposed (not being a supply the consideration for which is specifically described in these Terms as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under these Terms but for the application of this section (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the GST Supplier, an amount equal to the GST payable by the GST Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the GST Supplier by the Recipient without set-off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

#### 13.4 Reimbursements (net down)

If a payment to a party under these Terms is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

### 14. Confidentiality

To the extent that any Confidential Information is disclosed, communicated or otherwise made available to a party (**Receiving Party**) in connection with these Terms, each party agrees:

- (a) to maintain the confidentiality of the Confidential Information;
- (b) not to use or reproduce the Confidential Information for any purpose other than to the extent required to exercise any of its rights or perform any of its obligations under these Terms; and

- (c) not to disclose the Confidential Information to any person except:
  - (i) to those of its personnel that need to know for the Receiving Party to exercise any of its rights or perform any of its obligations under these Terms (and only to the extent that they need to know);
  - (ii) to the extent the Receiving Party is required by law to disclose the information.

## **15. Privacy**

Disclosure by you of Personal Information to us may be subject to applicable Privacy Laws. Accordingly, the Goods and/or Services are provided on the basis that you will only disclose Personal Information about an individual to us provided:

- (a) it is for a purpose related to the performance of these Terms;
- (b) you have made all disclosures required under Privacy Laws;
- (c) you have obtained any consents required under Privacy Laws; and
- (d) to do so would not otherwise breach Privacy Laws.

If the performance of these Terms requires a third party to supply Personal Information to either party (**PI Receiver**) on the other party's request, it is the obligation of the PI Receiver to ensure that the third party complies with paragraphs (a) to (d) above, and the PI Receiver indemnifies the other party against any Loss resulting from the PI Receiver's failure to do so or to otherwise comply with applicable Privacy Laws.

## **16. Warranties**

### **16.1 Mutual warranties**

Each party warrants to the other that:

- (a) it is authorised to enter into these Terms; and
- (b) it has full power to carry out its obligations under these Terms.

### **16.2 Third party goods**

You acknowledge and agree that the Goods may be manufactured, in whole or in part, by third parties. To the extent permitted by law, we make no warranties in relation to such third party components. We will, to the extent permitted under our agreements with third parties, pass the benefit of any warranties offered by the manufacturer of such third party components to you.

### **16.3 No other warranties**

Subject to section 17.2 and to the extent permitted by law, the express warranties specified in these Terms are exclusive and we make no other representations or warranties (express or implied), including warranties of merchantability, non-infringement of third party intellectual property rights and fitness for a particular purpose.

## **17. Liability and Remedy**

### **17.1 Limitation and exclusion**

Subject to section 17.2, but despite any other provision of these Terms, and to the maximum extent permitted by law:

- (a) we exclude all liability and responsibility (including for negligence) arising from or in connection with these Terms or the provision of the Goods or Services for any and all actual or anticipated loss of profits, revenue, goodwill, savings, data, business opportunity, or expectation, and any and all indirect, special, consequential, punitive or exemplary Losses;
- (b) our liability for breach of a warranty given in sections 4.1(b) or 7.1(b) is limited to:
  - (i) in the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and
  - (ii) in the case of Goods, the cost of replacing the Goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the Goods, supplying equivalent goods or having the Goods repaired; and
- (c) subject to paragraphs (a) and (b), our total aggregate liability (including for negligence) under or in connection with these Terms is otherwise limited to the total amounts paid by you for the Goods or Services the subject of the relevant claim.

### **17.2 Statutory terms**

To the extent permitted by law, we exclude from these Terms all representations, guarantees, conditions, warranties, rights, remedies, liabilities and other terms that may be conferred or implied by statute, general law or custom (except any guarantee or right conferred under any legislation including the Australian Consumer Law, the exclusion of which would contravene legislation or cause part or all of these Terms to be void). Any liability we have to you will be reduced by the extent (if any) to which you caused or contributed to the Loss.

### **17.3 Equivalent relief**

- (a) You acknowledge that we may supply the Goods as a reseller.
- (b) Where we supply Goods to you as a reseller and to the extent permitted by law, our liability under these Terms will be no greater than the liability the third party supplier has to us.
- (c) If we are unable to make a successful claim upon the third party supplier, whether in full or in part, in respect of any defect or other matter claimed by you under these Terms, then, to the extent permitted by law, we will have no liability for the portion of the claim so denied by the third party supplier.

### **18. Force Majeure**

If either of us is wholly or partially unable to perform its obligations under these Terms because of a Force Majeure Event (**Affected Party**), then:

- (a) promptly after the Force Majeure Event arises, the Affected Party must notify the other party of the extent to which the Affected Party is unable to perform its obligations;
- (b) the Affected Party must take all reasonable steps to mitigate the effect of the Force Majeure Event;
- (c) provided that the Affected party complies with paragraphs (a) and (b), the Affected Party will be excused from performing the obligations it is prevented from performing by the Force Majeure Event, until such time as the Force Majeure Event ceases preventing that performance; and
- (d) if the Affected Party's inability to perform its obligations continues or is likely to continue for more than 30 days, the Affected Party may terminate these Terms.

### **19. Termination**

#### **19.1 Termination for cause**

Either party may terminate these Terms for cause if the other party:

- (a) breaches any term of these Terms:
  - (i) which is not capable of remedy; or
  - (ii) which is capable of remedy and the other party fails to remedy the breach within 30 days of receiving notice requiring it to do so; or
- (b) if the other party suffers an Insolvency Event (subject to any applicable statutory stay on the exercise of such rights under this section, including under sections 415D, 434J and 451E of the Corporations Act).

### **20. Consequences of termination**

#### **20.1 Confidential Information**

If these Terms are terminated or expire:

- (a) you must immediately pay us all amounts outstanding under these Terms as at the date of such termination or expiry;
- (b) each party must continue to keep confidential the other party's Confidential Information in accordance with section 14; and
- (c) each party's right to use and disclose the other party's Confidential Information ceases other than in relation to information that that party is required to retain or disclose in accordance with section 14, or in order to continue performing any surviving obligations or exercising any surviving rights.

#### **20.2 Accrued rights and remedies, no merger**

The rights and obligations of the parties under these Terms do not merge on completion of any transaction contemplated by these Terms.

#### **20.3 No prejudice of right of action or remedy**

Except as expressly set out in these Terms, any termination or expiry of these Terms, in its entirety or as it relates to one or more discrete parts, will not prejudice any right of action or remedy which may have accrued to either party prior to that expiry or termination.

#### **20.4 Survival**

Any indemnity and any obligation of confidence under these Terms is independent and survives termination of these Terms. Any other term by its nature intended to survive termination of these Terms survives that termination, including sections 12.3, 13, 14, 15, 17, 20, 21 and 22.

### **21. Notices and communications**

A notice, demand, consent, approval or communication under these Terms (**Notice**):

- (a) must be:
  - (i) in writing, in English and signed by a person duly authorised by the sender; and
  - (ii) hand delivered, or sent by express post or email to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender; and

- (b) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (i) if hand delivered, on delivery;
  - (ii) if sent by express post, on the third Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); and
  - (iii) if sent by email, an hour after the time the sender's information system recorded that the email left the sender's information system unless, within four Business Hours, the sender is informed (by automatic notice or otherwise) that the email has not been received by the recipient,
- but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## 22. Miscellaneous

### 22.1 Relationship between the parties

Nothing in these Terms constitutes the parties as partners or joint venturers or agents for each other, or gives rise to any other form of fiduciary relationship between the parties.

### 22.2 Assignment

Neither party may assign, transfer or novate its rights or obligations under these Terms without the other party's prior written consent (such consent not to be unreasonably withheld).

### 22.3 Entire agreement

- (a) These Terms constitute the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with their subject matter.
- (b) Any terms and conditions of purchase that may be incorporated in any purchase order or other document given to us by you have no legal effect.

### 22.4 Severability

A term or part of a term of these Terms that is illegal or unenforceable may be severed from these Terms and the remaining terms or parts of the terms of these Terms will continue in force.

### 22.5 No Waiver

We do not waive a right, power or remedy in connection with these Terms if we fail to exercise or delay in exercising that right, power or remedy.

### 22.6 Governing law and jurisdiction

These Terms are governed by the law of Victoria, Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and the courts having appeal from them.

## 23. Defined terms & interpretation

### 23.1 Defined terms

In these Terms, unless the context requires otherwise:

**Business Day** means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

**Business Hours** means 9am to 5pm on a Business Day.

**Confidential Information** of a party means all information (regardless of the form of disclosure or the medium used to store it) treated by a disclosing party as confidential and of which the recipient first becomes aware either:

- (a) through disclosure by the disclosing party to the recipient; or
- (b) otherwise through the recipient's involvement with the disclosing party.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Force Majeure Event** means any:

- (a) fire, flood, earthquake, pandemic or act of God;
- (b) riot, civil disorder, rebellion, revolution or any other unlawful act against public order or authority;
- (c) industrial dispute;
- (d) government restraint;
- (e) pandemic or epidemic; or
- (f) other event or cause beyond the reasonable control of the non-performing party.

**Goods** means the goods we will supply to you, as specified in the Purchase Order (if any).

**GST** means any goods and services tax imposed by legislation enacted by the Commonwealth of Australia including a tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

**Insolvency Event:**

- (a) for a person in Australia, means any one or more of the following events occurring in respect of that person:
- (i) a resolution is passed for the winding up of that person (other than for the purposes of reconstruction or amalgamation, which, in the case of a party, is on terms which have been previously approved in writing by the other party);
  - (ii) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all or any part of the property of that person;
  - (iii) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all or any part of the business or assets of that person;
  - (iv) that person makes any composition or arrangement or assignment with or for the benefit of its creditors;
  - (v) that person or any creditor appoints a voluntary administrator or a resolution is passed for that person to execute a deed of company arrangement;
  - (vi) that person ceases, or threatens to cease to carry on its business; or
  - (vii) that person becomes unable to pay its debts as and when they become due; or
- (b) for a person in any other jurisdiction, means any event analogous or equivalent to the events described in paragraph (a) occurs in respect of that person.

**Losses** means all liabilities, losses, damages, costs and expenses suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute or under any other cause of action, and Loss has a corresponding meaning.

**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth).

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Price** means the amount payable by you under these Terms for the Services and/or the Goods (as the case may be) and as specified in the Purchase Order (if any).

**Privacy Laws** means the *Privacy Act 1988* (Cth) including the Australian Privacy Principles set out in the Act, and any code approved by the Privacy Commissioner under the *Privacy Act 1988* (Cth) which binds us or you.

**Purchase Order** means the online form that specifies the Goods that we will supply to you, in accordance with these Terms.

**Receiving Party** is defined in section 14.

**Services** means the work, activities, functions and responsibilities performed or provided, or to be performed or provided, by us under these Terms.