

Terms and Conditions Cabrini Health Limited

ACN 108 515 073 - ABN 33 370 684 005
183 Wattletree Rd, Malvern Victoria 3144

1) **Definitions and Interpretation:** In these terms and conditions:

Cabrini means Cabrini Health Limited (ACN 108 515 073) and its related bodies corporate.

CH2 means Clifford Hallam Healthcare Pty Ltd (ACN 001 655 554) or such other third-party logistics provider appointed by Cabrini.

Contract means the contract between Cabrini and the Supplier comprising the Purchase Order, these Purchase Order Terms and Conditions, and any Schedules, Attachments or other Appendices to the Purchase Order.

Delivery Address means the address of the Cabrini site to which Products are to be delivered as specified in the Purchase Order.

Delivery Date means the date for delivery (if any) as specified in the Purchase Order.

GST means Goods and Services Tax as that term is defined under GST Law.

GST Law means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Personnel means a party's officers, employees, agents, and subcontractors.

Product means any goods and/or services to be supplied under this Contract.

Price means the price, including all levies, duties, taxes (including GST), insurance, packaging and delivery and distribution costs, to be paid by Cabrini for each Product as set out in Attachment C. For Products incorporating services, price may be expressed as an hourly rate.

Purchase Order or **PO** means any written document issued by Cabrini to the Supplier for the supply of Products from time to time.

Specifications means:

- a) any description of, or representation about, the requirements for the Products to be provided as specified by Cabrini in a Purchase Order; and/or
- b) the Supplier's published specifications for the Products.

Supplier means the person or entity (whether incorporated or not) who supplies the Products to Cabrini under this Contract.

Tax Invoice means a valid tax invoice that complies with the requirements of GST laws.

Total Price means the maximum amount that may be paid to Supplier for Cabrini for the supply of Products under this Contract. Total Price may be determined by reference to Price and based on the quantity of Products supplied to Cabrini or be a fixed price agreed by the parties.

2) **Contract Formation:** This Contract may be formed electronically with the Supplier. A binding Contract between Cabrini and the Supplier will come into existence on the earlier of the date on which the Supplier confirms acceptance of the Contract or commences delivery of any of the Products to Cabrini in connection with the Contract.

3) **Delivery:** The Supplier must deliver the Products on the Delivery Date to the Delivery Address in accordance with any delivery instructions set out in the Purchase Order and obtain the name and signature of the Cabrini Personnel receiving delivery of the Products. Execution of a delivery document by Cabrini Personnel does not constitute acceptance of the Products by Cabrini.

4) **Inspection and Acceptance:** Cabrini (or its authorised agent) has the right to inspect the Products on delivery and may, but is not required to, issue written confirmation to the Supplier confirming acceptance of the Products. If Cabrini determines that any Products delivered do not comply with the Specifications or have not been supplied by the Supplier in accordance with this Contract (**Non-Compliant Products**), Cabrini reserves the right to reject the Non-Compliant Products and at its election:

- a) require the Supplier to promptly rectify or re-supply the Products so that they comply with the Specifications; or
- b) promptly return the Non-Compliant Products to the Supplier at the Supplier's cost and terminate this Contract by written notice to the Supplier without any liability.

Cabrini will not be liable to pay the Supplier for any additional expenses incurred by the Supplier to rectify or re-supply the Non-Compliant Products or to pay the costs of any Non-Compliant Products that are returned to the Supplier.

5) **Price:** The prices are fixed and include all levies, duties, taxes (including GST unless expressly stated as being exclusive of GST), insurance, packaging and delivery and distribution costs. The total amount payable by Cabrini under this Contract will not exceed:

- a) the Total Price; or
- b) if no Total Price is stated on the PO, the amount specifically authorised in writing by Cabrini.

6) **Distribution:** Cabrini distributes some Products via its 3PL relationship with CH2 and the Supplier may, from time to time, be required to deliver the Products to CH2 as a single delivery point. The Supplier acknowledges and agrees that its Prices for the Products will be made available to CH2, and that Cabrini requires CH2 not to use, disclose, or promote use that information, which is confidential to the Supplier and Cabrini, except as expressly required to provide 3PL services to Cabrini.

7) **Payment:** Unless otherwise agreed in writing by Cabrini, the Supplier may only invoice Cabrini:

- a) for Products incorporating services, upon completion of the services; or
- b) for Products comprising goods, on or after the delivery of the Products.

Each Tax Invoice issued for payment by the Supplier must itemise the Price and GST payable for the Products, state the PO number, and be addressed to the Cabrini Contact at the address for invoices specified in the PO. Cabrini will pay each correctly rendered, valid Tax Invoice (less any amounts due to Cabrini from the Supplier) within 30 days from the end of the calendar month in which the Tax Invoice was received by Cabrini. Cabrini is entitled to withhold payment of any Tax Invoice that does not comply with these invoicing requirements or to the extent that it relates to Non-Compliant Products or is otherwise disputed by Cabrini.

8) **GST:** The Supplier must ensure that any Tax Invoice issued for payment will enable Cabrini to claim Input Tax Credits in respect of the Products to which that Tax Invoice relates. If the PO nominates an amount of GST, this amount is an estimate only and should not be relied upon by the Supplier. The Supplier is solely responsible to ensure the Tax Invoice specifies the correct amount of GST for the Products and complied with the requirements of GST Law.

9) **Australian Business Number (ABN):** Cabrini will withhold an amount of tax from any payment it makes to the Supplier for a supply of Products unless the Supplier provides a Tax Invoice or other document relating to the supply that quotes the Supplier's ABN.

10) **Risk and Title:** Risk in the Products will pass to Cabrini when the Products are properly delivered to the relevant Cabrini site (or CHR, if applicable) in accordance with any applicable delivery instructions specified in the relevant Purchase Order. Title in the Products (other than Products licensed for use by Cabrini pursuant to **clause 12**) will pass to Cabrini on written acceptance of the Products by Cabrini or payment for the Products in full, whichever is earlier.

11) **Cancellation:** Cabrini may cancel or reduce the quantity of a Product to be supplied under a Purchase Order by notifying the Supplier before the relevant Delivery Date or if the Supplier fails to supply a Product by the Delivery Date. Cabrini will not be liable to the Supplier

- for any amounts or expenses incurred by the Supplier for any cancelled Product.
- 12) **Intellectual Property Rights (IPR):** The Supplier assigns to Cabrini all IPR in any material created solely for Cabrini in the supply of the Products. The Supplier grants Cabrini (and its directors, agents, and contractors) a worldwide, non-exclusive, royalty-free, perpetual, irrevocable licence to use, reproduce, publish, adapt, and exploit any IPR in the Products so that Cabrini can make full use of the Products and receive the full benefit of the Contract.
 - 13) **Warranty:** The Supplier warrants that:
 - a) all Products comprising goods as supplied by the Supplier are:
 - i) new and in good condition;
 - ii) free from defects in design, materials and workmanship;
 - iii) of good and merchantable quality and fit for their intended purposes;
 - iv) compliant with the Specifications; and
 - i) compliant with all relevant Australian standards and industry codes and any other applicable standards required by law;
 - b) any Products comprising services supplied by the Supplier will be supplied:
 - i) with the degree of skill, care and diligence that would be expected of a skilled professional experienced in providing the same or similar services;
 - ii) in compliance with all reasonable directions of Cabrini and any applicable Cabrini policies (as notified to the Supplier from time to time); and
 - iii) in compliance with all relevant Australian standards and industry codes and any other applicable standards required by law; and
 - c) the Products and their use and supply will not breach any obligation of confidence owed by the Supplier or infringe any IPR of any person.
 - 14) **Therapeutic Goods Warranty:** Where the Products supplied by the Supplier are therapeutic goods, the Supplier further warrants that:
 - a) the Products have been subject to quality control testing in accordance with the Therapeutic Goods Administration (TGA) Code of Good Manufacturing Practice (and the Supplier will provide a copy of the analytical report to accompany the specific batch of the Products supplied if requested by Cabrini); and
 - b) the Supplier will comply with the TGA's uniform recall procedures for therapeutic goods and will notify Cabrini within 7 days of any Products being subject to a recall.
 - 15) **Breach of Warranty:** If the Supplier becomes aware, or Cabrini notifies the Supplier, that a Product fails to comply with any of the warranties given under this Contract, the Supplier must without prejudice to any other rights of Cabrini and at Cabrini's election:
 - a) promptly remedy that failure, including by replacing or re-supplying the Product to conform with the warranty and the requirements of this Contract;
 - b) accept return of the Products and:
 - i) provide to Cabrini a full refund of the Price paid for the Products; and/or
 - ii) set-off or deduct the Price paid for the Product from any amounts owing by Cabrini to the Supplier.
 - 16) **Indemnity:** The Supplier indemnifies Cabrini against all losses and damages (on a full indemnity basis and whether incurred by or awarded against Cabrini) that Cabrini may sustain or incur, whether directly or indirectly, as a result of:
 - a) a claim that the Products or their use or supply breaches any obligation of confidence owed to, or infringes the IPR of, any person;
 - b) a claim, demand, suit, action or proceeding by a third party arising from an act or omission of the Supplier in connection with this Contract whether negligent or not;
 - c) without limiting paragraph (b), any act or omission of the Supplier in connection with this Contract resulting in or contributing to:
 - i) claims by any third party against Cabrini in respect of personal injury or death; or
 - ii) loss of or damage to Cabrini's or a third party's physical property; or
 - iii) failure by the Supplier to comply with the requirements of the Contract.
 - 17) **Limit of liability:** Subject to **clause 18**, the total liability of either party under or in connection with this Contract, whether in contract, tort including negligence or otherwise (but excluding any liability arising for breach of confidence or, in the case of the Supplier, under any indemnity) will not exceed an amount equal to 150% of the total Fees paid or payable under this Contract.
 - 18) **Excluded liability:** Neither party will be liable, whether in contract, tort including negligence or otherwise for loss of profits, business, revenue, goodwill, opportunity or anticipated savings or any form of indirect or consequential loss or damage.
 - 19) **Insurance:** The Supplier must take out and maintain with a reputable insurer valid and enforceable insurance policies, including:
 - a) Public and Product Liability insurance covering the Supplier and its Personnel against any liability to any party arising out of or in connection with this Contract for an insured amount of not less than A\$20 million per accident or incident claim;
 - b) Workers Compensation insurance covering the Supplier for any claim against it by any person employed by the Supplier who provides Products in relation to this Contract (and ensure that each of its other Personnel have similar insurance) for an amount necessary to cover any potential liability under statute or at common law; and
 - c) Property insurance covering the Supplier for any loss or damage to any property used directly or indirectly in connection with the Products.
 - d) If the Products incorporate services, Professional Indemnity insurance for an insured amount of not less than A\$10 million per claim.
 - 20) **Assignment and Subcontracting:** The Supplier must not assign the whole or any part of this Contract. The Supplier must not use any subcontractors for supply of the Products without Cabrini's prior written consent. If the Supplier uses a subcontractor, the Supplier remains liable for the subcontractor's performance.
 - 21) **Termination:** Cabrini may terminate this Contract:
 - a) with one month's prior written notice without any liability for compensation and without being obliged to give any reason for so doing; or
 - b) immediately if the Supplier:
 - i) becomes insolvent or is petitioned in bankruptcy;
 - ii) being a company, a petition for winding up the company is presented;
 - iii) an order is made, or an application is brought, or a resolution is passed for its winding up;
 - iv) any step is taken to appoint a receiver or receiver and manager or administrator or liquidator to the Supplier; or
 - v) makes any arrangement for the benefit of creditors; or
 - vi) materially breaches any provision of this Contract.

Any such termination by Cabrini under this **clause 19** shall be without prejudice to any other of its rights and any failure by Cabrini to

exercise any right or remedy in relation to any specific default by the Supplier, including by terminating this Contract or any part thereof when such a right arises, shall not constitute a waiver by Cabrini of any of its rights pursuant to this Contract.

- 22) **Entire Agreement:** This Contract contains the entire agreement between Cabrini and the Supplier in relation to the Products. No confirmation, shipment, delivery document, licence or representation or Supplier terms and conditions will vary this Contract.
- 23) **Confidentiality:** This Contract and any information which the Supplier obtains from Cabrini relating to this Contract, whether in writing or otherwise, is Cabrini's confidential information unless it is:
- a) public knowledge at the time it is obtained by the Supplier, or
 - b) in the Supplier's lawful possession prior to being obtained from Cabrini.
- The Supplier must:
- c) keep Cabrini's confidential information confidential at all times;
 - d) not use it or disclose it to any person, except Supplier Personnel with a need to know for the purposes of performing or complying with the Supplier's obligations under this Contract; and
 - e) return it when the Supplier has performed all obligations under this Contract, or this Contract terminates or expires.
- The Supplier may not make any public statement about this Contract unless it has first obtained written consent from Cabrini.
- 24) **Compliance with Law:** The Supplier must comply with all relevant Law in the performance of this Contract.
- 25) **Applicable Law:** The Laws of Victoria apply to this Contract and the parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.
- 26) **Health and Safety and Acceptable Behaviour at Cabrini Sites:** Cabrini may immediately suspend or terminate this Contract if Cabrini reasonably considers that the Supplier's practices, policies, procedures or documents are inadequate to meet the obligations of this **clause 26**. The Supplier, when providing Products that comprise services or delivering Products for or in connection with this Contract, must:
- a) carry out its obligations under this Contract in a way that is safe and without risk to the health of its Personnel, Cabrini's Personnel, or any other person who may come into contact with the Products;
 - b) comply with all Laws concerning occupational health and safety, including but not limited to the *Occupational Health and Safety Act 2004 (Vic)* (**OHS Act**);
 - c) comply with all requirements specified by Cabrini to ensure the health, safety and wellbeing of its Personnel and visitors;
 - d) complete the OHS Contractor Questionnaire and submit all required documentation prior to performing any service at or delivering Products to any Cabrini site;
 - e) ensure all Supplier Personnel undertaking work at a Cabrini site have completed the Cabrini OHS induction and that they understand all information provided by Cabrini relating to its requirements for ensuring the health, safety and wellbeing of its Personnel and visitors;
 - f) ensure adequate supervision is provided for Supplier Personnel performing services at or delivering Products to a Cabrini site;
 - g) ensure the Supplier Personnel are competent, trained and skilled and have all necessary qualifications, licences and/or certifications to perform the services or deliver the Products;
 - h) ensure all Supplier Personnel sign in and out of each Cabrini site daily;
 - i) complete all documentation required to ensure the health, safety and wellbeing of Cabrini Personnel and visitors. This may include but is not limited to Job Safety Environment Analyses, Safe Work Method Statements, Risk Assessments and Permits;
 - j) ensure any required plant and/or equipment is provided to perform any services or deliver any Products is in good working order, has been properly maintained in accordance with the manufacturer's instruction, is tested and tagged in accordance with any applicable requirements, and is safe for use;
 - k) when at a Cabrini site, report all hazards, near misses, injuries and/or illnesses (where applicable) observed by or occurring to Supplier Personnel as soon as reasonably practicable to a Cabrini representative. Where a notifiable incident (as that term is defined in the OHS Act) occurs, the Supplier Personnel must immediately notify a Cabrini representative and the Cabrini OHS Manager and must ensure the incident site is not disturbed unless there is immediate risk to the health and safety of a person; and
 - l) comply with any other lawful directions provided by Cabrini to ensure the health, safety and wellbeing of its Personnel and visitors or to investigate any incidents occurring at a Cabrini site.
- 27) **Modern Slavery:** Cabrini may immediately suspend or terminate this Contract if Cabrini reasonably considers that the Supplier's practices, policies, procedures or documents are inadequate to meet the obligations of this **clause 27**. The Supplier, when providing Products that comprise services or delivering Products for or in connection with this Contract, must:
- a) comply with the *Modern Slavery Act 2018 (Cth)* and Cabrini's Ethical Sourcing Code; and
 - b) notify Cabrini in writing if it becomes aware of or has reason to believe that it, or any of its Personnel, are subject to an investigation relating to an alleged Modern Slavery Act offence.
- 28) **Cybersecurity:** The Supplier warrants and represents to Cabrini that the Supplier has provided, and its Personnel have completed, cybersecurity awareness training in accordance with reasonably accepted industry standards.