

## Purchasing Terms & Conditions

### 1. APPLICATION OF TERMS AND CONDITIONS

1.1 These terms and conditions apply to any purchase order issued by the Victorian Institute of Forensic Mental Health (**Forensicare**) to the person or organisation identified in the purchase order (**Supplier**) for the supply of goods described in a purchase order (**Goods**).

1.2 The following documents issued with a purchase order form part of that purchase order:

- (i) documents incorporated by reference or issued by Forensicare (including specifications); and
- (ii) Supplier documents, including Supplier quotes, but excluding any Supplier terms and conditions.

### 2. ACCEPTANCE OF PURCHASE ORDER BY SUPPLIER

2.1 The Supplier is deemed to have accepted the purchase order on these terms and conditions upon the earlier to occur of:

- (i) Supplier notifying Forensicare that it accepts the purchase order; or
- (ii) supplying or part supplying the Goods stated in the purchase order.

2.2 When the Supplier accepts a purchaser order in accordance with clause 2.1 above, a binding agreement is formed between Forensicare and the Supplier for the supply of the Goods stated in the purchase order and terms of that agreement are made up of the purchase order (including any documents issued with the purchase order as described in clause 1.2 above) and these terms and conditions, (the **Agreement**).

2.3 To avoid doubt and to the extent permitted by law, all other terms and conditions in respect of the Goods are excluded from and will not be incorporated into the Agreement.

### 3. TITLE AND RISK

3.1 Title in the Goods pass to Forensicare upon acceptance of the Goods. Risk in the Goods pass to Forensicare when the Goods are delivered in accordance with clause 4. If the Goods are rejected by Forensicare in accordance with clause 5.2 and retaken by the Supplier in accordance with clause 5.3, the risk in the Goods passes back to the Supplier.

### 4. SUPPLY AND DELIVERY

4.1 The Supplier must supply the Goods to Forensicare in accordance with this Agreement and any reasonable directions of Forensicare.

4.2 The Supplier must deliver the Goods to the one of the following delivery points (as specified in the Agreement) during the following times:

- (i) Thomas Embling Hospital at Yarra Bend Road, Fairfield, VIC between the hours of 7.30am to 3.30pm, on the following days: Monday to Friday.
- (ii) The Community Forensic Mental Health Service at 505 Hoddle Street, Clifton Hill, VIC between the hours of 9am – 5pm on the following days: Monday to Friday.
- (iii) Deliveries for Forensicare which are to be delivered to a Corrections Victoria site (including any correctional facility) may only be made by prior arrangement.

4.3 Unless otherwise specified in the purchase order, all costs of delivery must be borne and paid by the Supplier. The supplier will bear all costs for delivering and insuring the goods in accordance with clause 12.

4.4 All Goods delivered must be accompanied by a delivery docket detailing the purchase order number, and/or an advance shipping notice (if requested by Forensicare) the description and quantity of goods, applicable user manuals, which will include all necessary instructions for the continued safe and effective use of the Good any other information required by Forensicare.

### 5. ACCEPTANCE OR REJECTION OF GOODS

5.1 If the Goods confirm with this Agreement, Forensicare will promptly issue written notification of acceptance of the Goods. If Forensicare does not give written notification of acceptance or rejection of the Goods within 30 days of delivery, acceptance of the Goods will be deemed to have occurred on the date of delivery.

5.2 If the goods:

- (i) do not conform with this Agreement; or
- (ii) on delivery are damaged, unfit for purpose or not of merchantable quality,

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

5.3 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, Forensicare 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 discretion.

### 6. PRICING

6.1 The price per item of each of the Goods, as specified in the purchase order (**Unit Price**) is fixed and inclusive of all taxes (excluding GST), for the duration of the Agreement.

6.2 The Supplier may not charge Forensicare 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 Forensicare.

## 7. GST

7.1 The terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**).

7.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.

7.3 If GST is imposed on any supply made under or in accordance with the Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with the Agreement.

## 8. INVOICING AND PAYMENT

8.1 On or following acceptance of the Goods, or as otherwise specified in the Agreement, the Supplier must submit a tax invoice (containing all information required in a tax invoice for the purposes of the GST Act together with such other information as Forensicare may reasonably require) to Forensicare for the Purchase Price. For the purposes of this Agreement the **Purchase Price** is the sum ascertained by multiplying the Unit Price for the applicable Goods by the number of units delivered.

8.2 Subject to clause 9, Forensicare will pay the invoiced amount within 30 days of receipt of an accurate invoice. However, if Forensicare disputes the invoiced amount, it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute in accordance with clause 16.

8.3 Payment of an invoice is not to be taken as evidence that the Goods have been supplied in accordance with the Agreement but must be taken only as payment on account.

8.4 Subject to clause 9, simple interest, as at the penalty interest rate fixed for the time being under section 2 of the *Penalty Interest Rates Act 1983* (Vic), accrues on a daily basis on any amount that is not, or is no longer, disputed in accordance with this Agreement, that is due and owing under a properly rendered tax invoice (**Overdue Amount**) and which has been outstanding for more than 30 days from the date of receipt of the correctly rendered invoice or the date that the amount ceased to be disputed, as the case may be.

## 9. FAIR PAYMENTS POLICY

9.1 This clause 9 applies only if the total aggregate Purchase Price payable under this Agreement is less than \$3 million.

9.2 If this clause 9 applies, the reference in clause 8.2 to 30 days is taken to be a reference to 10 Business Days.

9.3 Simple interest payable under clause 8.4 becomes payable on an Overdue Amount under this clause 9 when the Overdue Amount has been outstanding for more than 10 Business Days from the date of receipt of the correctly rendered invoice or the date that the amount ceased to be disputed, as the case may be.

## 10. WARRANTIES

10.1 The supplier represents and warrants to Forensicare that:

- (i) it has the right to enter into the Agreement and perform the Services;
- (ii) it has the right to sell, and transfer title to and property in, the Goods to Forensicare;
- (iii) it is entitled to use and deal with any intellectual property rights which may be used by it in connection with the Goods and that Forensicare's use of the Goods as contemplated by the Agreement will not infringe the intellectual property rights of any party;
- (iv) it and its personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under this Agreement; and
- (v) it has not entered into the Agreement on behalf of a trust; and
- (vi) the Goods:
  - a. are new and fit for the purpose stated in the purchase order (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
  - b. conform in all respects with this Agreement;
  - c. are free from defects (including defects in installation); and
  - d. are of merchantable quality and comply with all laws, codes and any applicable Australian (or equivalent) standards;
- (vii) without limiting any guarantee under Australian Consumer Law, spare parts and repairs in respect of the Goods will be available for at least five (5) years from the date the Goods are accepted in accordance with clause 5.

- (viii) If provided for in the purchase order, the Supplier must obtain the benefit of any manufacturer's warranties for Forensicare.
- 10.2 The Goods will be supplied with a minimum of 12 months warranty from the date of acceptance in accordance with clause 5. During any applicable warranty period the Supplier must, without charge and without prejudice to any other rights or remedies of the Agency, repair, collect and replace, or resupply the Goods that do not comply with this Agreement, including any warranties under this clause 10.

## 11. LIABILITY

- 11.1 The Supplier indemnifies, and will at all times keep Forensicare and its personnel indemnified liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way in connection with, any:
- (i) personal injury, including sickness and death;
  - (ii) property damage;
  - (iii) breach of an obligation of confidence or privacy;
  - (iv) fraudulent or unlawful acts or omissions or wilful misconduct;
  - (v) 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
  - (vi) 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.

- 11.2 The Supplier's liability to indemnify Forensicare under clause 11.1 is reduced to the extent that any wilful, unlawful or negligent act or omission by Forensicare contributed to the liability, loss, damage, cost, expense or compensation.

## 12. INSURANCE

- 12.1 The Supplier must obtain and maintain insurance cover, at the time of delivery of the Goods and, if requested by Forensicare, for a period of up to 7 years after the Goods are delivered, 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. Product liability insurance must be

maintained for the longer of any warranty period and three years from acceptance of the Goods.

- 12.2 Upon request, the Supplier must provide Forensicare with evidence of the currency of any insurance it is required to obtain and maintain.

## 13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 The Supplier irrevocably and unconditionally grants to Forensicare 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 Forensicare the full use and enjoyment of those Goods and the Supplier must, upon request by Forensicare, do all things as may be necessary (including executing any documents) to give full effect to such rights.
- 13.2 For the purpose of this Agreement, **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.

## 14. CONFIDENTIALITY, PRIVACY AND DATA PROTECTION

- 14.1 The Supplier and its personnel must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person. For the purpose of this clause 14 **Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, Forensicare, including any information designated by Forensicare 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 Forensicare; (iv) is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with Forensicare 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.
- 14.2 The Supplier consents to Forensicare publishing or otherwise making available information in relation to the Supplier (and the supply of the Goods):

- (i) as may be required to comply with the Contract Publishing System (which is the Victorian Government's system that requires publication of details of contracts entered into by Victorian Government departments, bodies and agencies including any replacement or amended system);
  - (ii) to other Victorian Public Entities or Ministers of the State in connection with the use of the Goods;
  - (iii) to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
  - (iv) to the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic);
  - (v) to comply with Law, including the *Freedom of Information Act 1982* (Vic); or
  - (vi) to the IBAC.
- 14.3 The Supplier acknowledges that it will be bound by the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier for the purposes of the Agreement, in the same way and to the same extent as the Privacy Obligations would have applied to the Customer in respect of that act or practice had it been directly done or engaged in by Forensicare.
- 14.4 The Supplier acknowledges that Forensicare is bound by the Protective Data Security Standards issued under Part 4 of the *Privacy and Data Protection Act 2014*. The Supplier will not do any act or engage in any practice that would contravene or give rise to a breach of a Protective Data Security Standard in respect of any Data collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of the State, under or in connection with the Agreement.
- 15. COMPLIANCE WITH LAW AND POLICY**
- 15.1 The Supplier must, in performing its obligations under the Agreement, comply with the laws relevant to the provision of the Goods by the Supplier.
- 15.2 The Supplier acknowledges that:
- (vii) the [Victorian State Government's Supplier Code of Conduct](#) (the **Code**) is an important part of the State's, and therefore Forensicare's, approach to procurement and describes the State's minimum expectations regarding the conduct of suppliers;
  - (viii) it has read and aspires to comply with the Code; and
- (ix) the expectations set out in the Code are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, under the Agreement or at Law.
- 16. DISPUTE RESOLUTION**
- 16.1 If any dispute arises under or in connection with this Agreement (**Dispute**), either party may at any time give written notice to the other (**Dispute Notice**) requesting that a meeting take place to seek to resolve the Dispute in good faith.
- 16.2 If the Dispute is not resolved in 15 Business Days it will be referred to mediation (**Mediation**) conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC mediation guidelines (**Guidelines**) with each party bearing their own cost.
- 16.3 If the parties fail to settle the Dispute at Mediation, the parties may agree to submit the dispute for resolution to final and binding arbitration.
- 16.4 The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.
- 17. TERMINATION**
- 17.1 Forensicare 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) or 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.
- 17.2 Forensicare may terminate the Agreement without cause on notice to the Supplier (this includes cancelling a purchase order).
- 17.3 If the Agreement is terminated pursuant to clause 17.2, Forensicare will pay the Supplier:
- (i) for the Goods delivered in accordance with the Agreement up to the date of the termination; and

- (ii) the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit, and Forensicare has no other liability to the Supplier in relation to that termination.
- 17.4 When Forensicare issues a notice under clause 17.2, 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.
- 17.5 The Supplier may terminate the Agreement by giving at least 20 Business Days written notice to Forensicare if Forensicare fails to pay amounts due under this Agreement.
- 17.6 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.
- 17.7 On termination or expiry the Supplier must immediately, following instructions by Forensicare, cease using all materials that contain any Confidential Information by either destroying the materials or returning the materials at no additional cost to Forensicare.
- 18. GENERAL**
- 18.1 These terms and conditions shall be governed by and construed in accordance with the laws of the State of Victoria. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- 18.2 Time is of the essence in relation to the supply of the Goods.
- 18.3 The Agreement may only be varied or replaced by a written document executed by the parties.
- 18.4 A waiver of any right, power or remedy under the Agreement must be in writing and signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Agreement does not amount to a waiver.
- 18.5 Any provision of the Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.
- 18.6 Forensicare may set off against any sum owing to the Supplier under the Agreement any amount then owing by the Supplier to Forensicare.
- 18.7 Subject to clause 18.8, a party may not assign any right under the Agreement without the prior written consent of the other party. The Supplier will be responsible for acts and omissions of any assignee.
- 18.8 Forensicare may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate the Agreement to any Victorian Public Entity in the event of any State government restructure or other re organisation or change in policy.
- 18.9 Clauses 3, 5.3, 9, 10, 11, 12, 13, 14, 17 and this clause 18 of this Agreement survive the termination or expiry of this Agreement or the completion of the provision of Goods and may be enforced at any time.