

Medibank Purchase Order Terms and Conditions

1. Terms and Conditions framework

1.1 In the event that there is no Existing Agreement between Medibank and the Supplier, the Purchase Order and these Terms and Conditions shall apply, and shall constitute the entire agreement between Medibank and the Supplier for the supply of the Goods/Services.

1.2 These Terms and Conditions shall replace any terms and conditions of the Supplier in respect of the Goods/Services which are subject to the Purchase Order.

1.3 If the Supplier does not agree to the terms of the Purchase Order and these Terms and Conditions, the Supplier must notify Medibank by 5:00pm the next Business Day, otherwise, the Supplier is deemed to have accepted them.

1.4 To the extent of any inconsistency between these Terms and Conditions and the Purchase Order, the terms of the Purchase Order shall prevail.

1.5 These Terms and Conditions may be amended by Medibank, in its discretion, from time to time.

1.6 All references to monetary amounts in these Terms and Conditions and the Purchase Order, are in Australian Dollars unless otherwise expressly stated.

2. Supplier Performance

2.1 The Supplier must supply the Goods/Services in accordance with the Purchase Order and these Terms and Conditions, or as otherwise agreed between Medibank and the Supplier and reflected in writing by way of Change Order.

2.2 The Supplier and Medibank acknowledge that the health and safety of all persons affected by the performance of the Purchase Order is at all times the paramount consideration in the supply of the Goods/Services.

3. Supplier Warranties

3.1 The Supplier represents and warrants that:

- (a) it is authorised to provide the Goods/Services; and
- (b) nothing in the supply of the Goods/Services by the Supplier infringes the Intellectual Property Rights of any third party.

3.2 The Supplier must:

- (a) supply the Goods/Services in accordance with all applicable laws and standards;
- (b) supply Goods/Services that are new, genuine, free from defects or encumbrances, are of merchantable quality and fit for purpose or any other purpose made known (expressly or impliedly) to the Supplier; and
- (c) supply the Goods/Services with due care and skill, and with appropriately qualified personnel.

4. Delivery of Goods/Services

4.1 Supplier must pay all delivery charges or any other charges connected with the delivery of the Goods/Services unless the Purchase Order expressly states otherwise.

4.2 The Supplier must deliver the Goods/Services in one package and that package must:

- (a) be labelled with Medibank's Purchase Order number, contain an itemised packing slip; and be appropriately packed for delivery.

4.2 The Supplier is, at its own expense, responsible for freight and delivery to the Delivery Point stated in the Purchase Order and for engaging with the Medibank contact to obtain instructions as to a suitable time and location for delivery to occur.

4.3 If the Goods/Services are not delivered in accordance with the Purchase Order, Medibank may:

- (a) require the Supplier to deliver, at its expense, the Goods/Services subject to the Purchase Order by the most expeditious means of transport; or
- (b) cancel the Purchase Order without liability and return, at the Supplier's expense for all activities associated with returns including logistics, of any Goods/Services that may have been delivered to Medibank.

5. Defective Goods/Services

5.1 Neither delivery of the Goods/Services by the Supplier, nor payment for the Goods/Services by Medibank will be deemed to be acceptance of those Goods/Services by Medibank.

5.2 If the Goods/Services do not meet the requirements of the Purchase Order and these Terms and Conditions, Medibank may reject the Goods/Services. Without prejudice to any other right or remedy of Medibank, Medibank may, in its absolute discretion, require the Supplier to:

- (a) replace, without cost to Medibank, the rejected Goods/Services with Goods/Services that satisfy the requirements of the Purchase Order and these Terms and Conditions;
- (b) refund any payment made for the rejected Goods/Services; or
- (c) repair the Goods/Services, to the satisfaction of Medibank.

5.3 The Supplier must reimburse Medibank for any costs incurred in relation to returning defective Goods/Services.

6. Title and risk

Subject to clause 5, title to, property in, and risk of loss or damage in relation to the Goods/Services passes to Medibank upon delivery.

7. Taxes

7.1 The total price stated in the Purchase Order is exclusive of the GST and all taxes and duties in connection with the performance of the Purchase Order and these Terms and Conditions;

8. Payment

8.1 Subject to the completed and satisfactory performance of the Purchase Order by the Supplier, Medibank shall pay the price stated in the Purchase Order in accordance with the Purchase Order and these Terms and Conditions, at a date which is no later than the payment terms stated in the Purchase Order from the receipt by Medibank of a correctly rendered invoice from the Supplier.

8.2 An invoice will be correctly rendered if it:

- (a) complies with requirements for a tax invoice for the purposes of the GST law (if applicable);
- (b) contains Medibank's Purchase Order or contract number;
- (c) contains Supplier's reference number for Medibank to quote with remittance of payment;
- (d) contains the price relating to the Goods/Services, itemised to reflect the same price components in the Purchase Order;
- (e) includes GST and taxes all Goods/Services as stated in the Purchase Order;
- (f) specifies the location where the Services were provided or Goods delivered to;

(g) specifies the Medibank contact details as stated in the Purchase Order;

8.3 Medibank will only accept invoices which bear such information and may require the Supplier to reissue a valid invoice prior to payment.

8.4 If Medibank disputes an invoice:

(a) payment will be suspended until the dispute is resolved; and

(b) the Supplier must provide any information or document requested by Medibank in relation to the invoice or dispute.

9 Electronic Trading

Unless agreed between the Supplier and Medibank in writing, the Supplier must at its own expense:

(a) register as a user of Medibank's nominated Procurement Portal;

(b) accept and comply with the Terms and Conditions relating to the use of the Procurement Portal; and

(c) send invoices related to this Purchase Order via the Procurement Portal.

10 Professional Services

10.1 Supplier is responsible for ensuring that resources provided to Medibank have been reviewed and endorsed to work by the Supplier via a background screening process, including a clear, current (within previous 12 months) police check.

10.2 Medibank procures resources via a day rate for resources with no additional costs for travel, expenses or overtime (weekends excluded) without prior written approval from Medibank. A daily rate will not include any charges for overtime beyond usual business hours.

10.3 The Payment Terms for professional services shall commence following Medibank's written approval of satisfactory completion of the professional services.

10.4 For professional services, Medibank may terminate resources with 7 days' written notice.

10.5 Medibank will not accept invoices for professional services which were completed greater than 12 months prior to the invoice submission date.

11. Medibank premises and facilities

When using Medibank's premises or facilities for any purpose related to the supply of Goods/Services, the Supplier must comply with any reasonable directions, policies and procedures of Medibank including Medibank's occupational health and safety policy.

12. Intellectual Property

12.1 All Intellectual Property related to the supply of the Goods/Services under the Purchase Order, vests in Medibank upon creation including but not limited to any manuals, training materials, guides and specifications provided as part of the Goods/Services. The Supplier must not use, disclose, copy or reproduce any such Intellectual Property except for the purposes of supplying the Goods/Services under the Purchase Order.

12.2 The total price stated in the Purchase Order is inclusive of all amounts payable in relation to the Goods/Services, including any Intellectual Property.

12.3 The Supplier grants Medibank a non-exclusive, assignable, royalty free, perpetual and irrevocable licence to use the Supplier's Intellectual Property in the supply of the Goods/Services, which pre-dates the date of the Purchase Order, in order for Medibank to exploit and enjoy the Goods/Services supplied by the Supplier.

12.4 The Supplier will not utilise Medibank's name, trade mark or likeness in any manner without Medibank's express written consent.

13. Confidential Information and Privacy

13.1 The Supplier must hold in confidence and not disclose, and must ensure its officers, employees, agents and subcontractors hold in confidence and do not disclose, Confidential Information except as required in order to perform its obligations under the Purchase Order and these Terms and Conditions. This clause 13.1 does not apply to information which is part, or becomes part, of the public domain otherwise than by breach of the Purchase Order and these Terms and Conditions, or which is required by law to be disclosed.

13.2 The Supplier must ensure that its employees, agents and subcontractors:

- (a) only use or access the computer systems, software and data of Medibank with Medibank's authorisation;
- (b) do not introduce into the computer systems, software or data of Medibank any virus or other malicious code; and
- (c) comply with all applicable laws, and any direction from Medibank in relation to the use of computer systems, software or data of Medibank;

13.3 The Supplier agrees that:

- (a) it will only collect, use, disclose, store, transfer or otherwise handle 'personal information' (as defined in the *Privacy Act*) in connection with the Purchase Order and these Terms and Conditions, and as reasonably necessary for the performance of its obligations to Medibank or under the Purchase Order and these Terms and Conditions, in accordance with the *Privacy Act*, as amended.
- (b) it will not transfer or disclose any personal information related to the Purchase Order to any recipient outside of Australia without Medibank's prior written consent.

13.4 The Supplier must immediately notify Medibank if it becomes aware of a breach or potential breach of these Terms and Conditions, including this clause 13.

14. Protection and Insurance

14.1 The Supplier indemnifies Medibank against any loss, liability and expense arising out of, or in connection with:

- (a) any unlawful or negligent act or omission of the Supplier or its officers, employees or subcontractors;
- (b) breach of the terms of the Purchase Order or these Terms and Conditions by the Supplier or its officers, employees or subcontractors;
- (c) infringement or alleged infringement of any Intellectual Property by the Supplier or its officers, employees or subcontractors, including in relation to the Goods/Services;
- (d) personal injury, death or property damage.

14.2 In the event of a claim relating to any actual or alleged infringement of any Intellectual Property by the Supplier, the Supplier must at the election of Medibank:

- (a) procure for Medibank the right to continue using the affected Goods/Services free from any infringement;
- (b) modify the Goods/Services so that Medibank is no longer infringing any Intellectual Property without causing a loss of functionality or performance;

(c) promptly replace the Goods/Services with other Goods/Services, which are free from infringement of any Intellectual Property which have the same or better performance or functionality capabilities than the original Goods/Services; or

(d) accept the return of the Goods/Services at the Supplier's expense and promptly refund to Medibank any monies paid in connection with the affected Goods/Services.

14.3 In addition to insurance that the Supplier is required to maintain by legislation (including workers compensation and compulsory third party motor vehicle insurance) the Supplier must maintain insurance cover from a reputable insurer sufficient to cover any loss or costs that may be incurred by the Supplier in connection with the supply of the Goods/Services.

14.4 The Supplier must provide evidence of such insurance to Medibank upon a reasonable request by Medibank.

14.5 The Supplier must ensure that any subcontractors have sufficient and enforceable insurance to satisfy any obligations they may have in connection with the Purchase Order and these Terms and Conditions.

15. Termination for default or insolvency

15.1 Without limiting any other rights or remedies Medibank has against the Supplier, Medibank may terminate the Purchase Order effective immediately by providing notice to the Supplier if the Supplier breaches a term of the Purchase Order or these Terms and Conditions, or an Insolvency Event occurs.

16. Termination for convenience

16.1 Medibank may at any time prior to the delivery of the Goods/Services, terminate the Purchase Order with respect to the Goods/Services without incurring any liability or cost.

16.2 Termination of the Purchase Order under clause 15 or 16 does not affect any accrued rights or remedies of Medibank.

16.3 Medibank may terminate the Purchase Order without consequence for failure of Supplier performance.

16.4 Medibank may terminate the Purchase Order in the event of specific events, including but not limited to acquisition of the supplier by a direct competitor to Medibank.

17. Waiver

Waiver of any provision of the Purchase Order or these Terms and Conditions must be in writing signed by Medibank's Delegation of Authority holder, and is effective only to the extent set out in the written waiver.

18. Set-off

Medibank may set-off any amount it owes the Supplier against any amount owing, or claimed by Medibank to be owing, by the Supplier to Medibank.

19. Amendment to Purchase Order

The Purchase Order or these Terms and Conditions may only be varied by the agreement of Medibank and the Supplier, must be in writing and related correspondence attached to the Purchase Order.

20. Assignment and Subcontracting

The Supplier must not assign, novate or subcontract its obligations under the Purchase Order and these Terms and Conditions, in whole or in part, without the prior written consent of Medibank.

21. Nature of relationship

The Purchase Order and these Terms and Conditions do not create a relationship of employment, agency or partnership between Medibank and the Supplier.

Definitions

For the purposes of the Purchase Order and these Terms and Conditions, the following definitions apply, unless otherwise stated:

Confidential Information means all information in any form relating to the business or affairs of Medibank which is disclosed, communicated or delivered to, learnt or developed by or which otherwise comes to the knowledge of or into the possession of, the Supplier under or in connection with the Purchase Order. For the purposes of these Terms and Conditions, Confidential Information includes Personal Information as defined in the Privacy Act.

Delivery Point means in relation to Goods, the delivery address for the Goods as set out in the Purchase Order and in relation to Services, the place for performance of Services as set out in the Purchase Order.

Existing Agreement means a set of terms and conditions expressly agreed between Medibank and the Supplier which are still in force, in relation to the same Goods/Services that are subject of the Purchase Order.

Goods/Services means any goods or services or services to be provided by the Supplier to Medibank which are subject to and contained in the Purchase Order.

GST and GST law have the meanings given by the *A New Tax System (Goods/Services and Services Tax) Act 1999* (Cth).

Insolvency Event means the Supplier ceases to be able to pay its debts as they become due, the Supplier ceases to carry on business, any step is taken by a mortgagee to take possession or dispose of any part of the Supplier's assets or business, or any step is taken to appoint a receiver, manager, liquidator, trustee in bankruptcy or administrator with respect to the Supplier or any analogous event occurs.

Intellectual Property means all intellectual property rights including copyright, patents, trademarks, designs, trade secrets, know-how; an application for any of the foregoing, and any rights of a similar nature.

Privacy Act means *Privacy Act 1988* (Cth), as amended.

Procurement Portal means the online platform used by Medibank for procure-to-pay activities including, but not limited to, issuing of Purchase Orders and invoice processing.

Professional Services means services received by Medibank via the engagement of contractors or consultants who are used as resources in order to respond to or achieve set Medibank business objectives.

Purchase Order means the purchase order issued by Medibank and provided to the Supplier, which is governed by and linked to these Terms and Conditions, in relation to the Goods/Services.

Supplier means the entity named on the Purchase Order as the supplier of the Goods/Services to Medibank.