

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 (**Terms and Conditions**) shall apply to the Supplier's supply of Goods/Services to Medibank.

1.2 The Purchase Order and these Terms and Conditions constitute the entire agreement between Medibank and the Supplier for the supply of Goods/Services. The Purchase Order and these Terms and Conditions apply to the exclusion of any terms and conditions proposed by the Supplier. By supplying the Goods/Services to Medibank, the Supplier confirms its acceptance of the Purchase Order and these Terms and Conditions.

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

1.4 Subject to clause 19, these Terms and Conditions may be amended by Medibank, in its discretion, from time to time

1.5 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 a registered user of Medibank's Procurement Portal;
- (b) it has, at all times, complied with the terms and conditions relating to Medibank's Procurement Portal;
- (c) it is authorised to provide the Goods/Services; and
- (d) 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, and all applicable policies and procedures of Medibank, including the Supplier Code of Conduct and Security;
- (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 Where the Purchase Order relates to Goods, the Supplier must:

- (a) deliver the Goods during normal business hours to the Delivery Point and in accordance with the timeframe set out in this Purchase Order or as otherwise instructed by Medibank;
- (b) deliver the Goods in one package that is appropriately packed for delivery, is labelled with Medibank's Purchase Order number, and contains an itemised packing slip.

4.2 Where the Purchase Order relates to Services, the Supplier must supply the Services at the Delivery Point and in accordance with the time frames set out in this Purchase Order or as otherwise instructed by Medibank.

4.3 Supplier is responsible for and must pay all freight, delivery charges or any other charges connected with the delivery of the Goods/Services unless the Purchase Order expressly states otherwise.

4.4 The time for delivery of the Goods or supply of the Services is of the essence in the Purchase Order and these Terms and Conditions.

4.5 If the Goods/Services are not delivered within the timeframes or in accordance with any delivery requirements set out in the Purchase Order or these Terms and Conditions, Medibank may:

- (a) require the Supplier, at the Supplier's expense, to immediately deliver, or organise the delivery of the Goods/Services by the most expeditious means of transport; or
- (b) cancel the Purchase Order without liability and return, at the Supplier's expense, any Goods/Services that may have already been delivered to Medibank.

5. Defective Goods/Services

5.1 If Medibank reasonably believes that the Goods/Services do not meet any requirements in the Purchase Order or these Terms and Conditions, Medibank may notify the Supplier in writing, within a reasonable period after the delivery of the Goods/Services, setting out reasons for Medibank's belief and the conditions or basis upon which Medibank will accept the Goods or Services, if any.

5.2 Any acceptance of the Goods/Services will not constitute a waiver of any right which but for the acceptance, would have had arising from any defect in, or failure to comply with the specifications for, the Goods/Services, and 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.

5.3 If Medibank notifies the Supplier in accordance with clause 5.1 that the Goods/Services do not meet the requirements of the Purchase Order and these Terms and Conditions or are otherwise unsatisfactory, Medibank may reject the Goods/Services and without prejudice to any other right or remedy it may have, Medibank may, in its absolute discretion, require the Supplier to immediately:

- (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 Medibank any payment made for the rejected Goods/Services; or
- (c) repair the Goods/Services, to the satisfaction of Medibank.

5.4 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 as reasonably determined by Medibank, Medibank shall, upon receipt of a correctly rendered invoice from the Supplier, pay the price stated in the Purchase Order for the Goods/Services within the time frame set out in the Purchase Order.

8.2 The Supplier must provide any invoices for the Goods/Services via the Procurement Portal (unless otherwise agreed by Medibank).

8.3 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;

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

8.5 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 Professional Services

9.1 This clause applies to the extent the Supplier provides Medibank with personnel to perform the Services (**Resources**).

9.2 The Supplier must ensure that all Resources it provides to Medibank:

- (a) have completed a background screening process within the past 12 months, including a clear, current police check; and
- (b) are sufficiently experienced, suitable and skilled in order to perform the Services.

9.3 Unless otherwise set out in the Purchase Order or agreed in writing, Medibank procures Resources via a day rate. The Supplier remains responsible for all costs associated with the Resources' travel, expenses and overtime (weekends excluded). A daily rate will not include any charges for overtime beyond usual business hours.

9.4 The Supplier may only invoice Medibank for professional services (including the provision of Resources) after it receives Medibank's written approval of satisfactory completion of the professional services.

9.5 If Medibank determines that the continued performance of the professional services by any Resource is no longer required, then Medibank may give the Supplier a notice to that effect and may require that the relevant Resource be replaced.

9.6 Medibank will not accept, and is not required to pay, invoices for professional services which were completed more than 12 months prior to the invoice submission date.

9.7 The Supplier must not engage any Resources outside Australia without Medibank's prior written consent.

10 Compliance with Business Ethics Laws

The Supplier must, in performing its obligations under this Terms and Conditions:

- (a) comply with Business Ethics Laws, and notify Medibank in writing of any actual or suspected non-compliance to the extent relevant to the Deliverables or Services;
- (b) have and maintain throughout the Term, its own policies and procedures that are designed to ensure the Supplier's compliance with Business Ethics Laws and provide evidence of the implementation of the policies and procedures when requested to do so by Medibank;
- (c) take all reasonable steps to identify, assess and address risks of Modern Slavery within its supply chain or any part of its business, including:
 - i. undertaking due diligence of its own suppliers and subcontractors to ensure that any risks or occurrences of Modern Slavery in their supply chains or any part of their businesses are identified, assessed and addressed;
 - ii. implementing a system of training for its employees in relation to the identification, assessment and addressing of Modern Slavery; and
 - iii. establishing grievance mechanisms through which individuals can raise concerns about working conditions or modern slavery without fear of negative consequences;
- (d) provide all reasonable assistance (including the provision of information and access to documents) that Medibank reasonably requires to enable it to determine whether the Supplier is complying with its obligations under this clause and to enable Medibank to comply with any legislative obligations relating to Modern Slavery; and
- (e) if the Supplier identifies any instances of Modern Slavery in its supply chains or any part of its business:
 - (i) notify Medibank as soon as reasonably practicable after it identifies, or has a reasonable basis for identifying, instances of Modern Slavery in its supply chains or any part of its business; and
 - (ii) undertake at its own cost, and within such reasonable timeframes as are agreed with Medibank, remediation actions to address and cease any instances of Modern Slavery in its supply chains or any part of its business. Any remediation action must address Modern Slavery occurrences to the satisfaction of Medibank

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, and must ensure its personnel comply, with any reasonable directions, policies and procedures of Medibank, including Medibank's occupational health and safety policy and security policy.

12. Intellectual Property

12.1 Nothing in these Terms and Conditions affects the ownership of any rights (including Intellectual Property Rights) in any materials or items that existed prior to the date of the Purchase Order.

12.2 Ownership of all rights (including Intellectual Property Rights) in Contract Materials is assigned by the Supplier to Medibank immediately 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 Rights in the Contract Materials except for the purposes of supplying the Goods/Services under the Purchase Order.

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

12.4 The Supplier grants Medibank a non-exclusive, assignable, royalty free, perpetual and irrevocable licence to use any of the Supplier's Intellectual Property Rights in items provided in connection with the supply of the Goods/Services to the extent necessary for Medibank to obtain the benefit of the Goods/Services.

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

12.6 The Supplier must obtain from any author of any copyright materials which form part of the Contract Material:

(a) consent in writing authorising Medibank, its licensees and successors in title to exercise all rights comprised in any copyright materials which form part of the Contract Material even if the exercise of those rights were to, but for this consent, infringe the author's moral rights under the *Copyright Act 1968* (Cth) or equivalent overseas law; and

(b) an acknowledgment that the consents and waivers in this clause are genuinely given and not obtained from the author or performer under duress by the Supplier or any third party.

13. Confidential Information and Privacy

13.1 The Supplier must hold in confidence and not use or disclose, and must ensure its officers, employees, agents and subcontractors hold in confidence and do not use or 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 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. Indemnities and Insurance

14.1 The Supplier indemnifies Medibank and each of its directors, employees, officers and agents 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 Rights 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

15.1 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 by providing the Supplier with 14 days written notice.

15.2 Medibank may terminate the Purchase Order effective immediately by providing notice to the Supplier if:

- (a) the Supplier breaches a term of the Purchase Order or these Terms and Conditions and fails to rectify such breach within 7 days of written notice;
- (b) the Supplier breaches a term of the Purchase Order or these Terms and Conditions and the breach is incapable of remedy;
- (c) the Supplier is acquired by a direct competitor to Medibank; or

(d) an Insolvency Event occurs.

15.3 The termination of the Purchase Order will not prejudice any right of action or remedy which may have accrued to either party prior to termination.

15.4 The Supplier may immediately terminate the Purchase Order by written notice, if:

(a) Medibank has not paid a correctly rendered and undisputed invoice within 30 days after the date on which payment is due; and

(b) the Supplier has first provided Medibank with written notice that payment is overdue and Medibank does not make payment of the outstanding undisputed invoice within 14 days of receiving the Supplier's notice.

15.5 The obligations which by their nature survive, or which are expressed to survive, the termination or expiry of the Purchase Order will survive.

15.6 On termination or expiry of the Purchase Order, the Supplier must return Medibank property in its possession or control (including Medibank's confidential information and personal information), or destroy any such property, as directed by Medibank.

16 Force Majeure

16.1 Subject to clause 16.2, a party will not be liable for any delay in or for any failure to perform its obligations under the Purchase Order or these Terms and Conditions to the extent that the party is able to demonstrate that such delay or failure has been caused by a Force Majeure Event.

16.2 A party prevented from performing any of its obligations under the Purchase Order or these Terms and Conditions by a Force Majeure Event must:

(a) notify the other party as soon as it is affected by the Force Majeure Event;

(b) continue to perform all unaffected obligations in accordance with the Purchase Order or these Terms and Conditions;

(c) use reasonable endeavours to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the other party;

(d) use reasonable endeavours to overcome the effects of the Force Majeure Event as soon as possible; and

(e) notify the other Party as soon as it is no longer affected by the Force Majeure Event.

16.3 Medibank is not required to pay the Supplier in relation to any Goods/Services not provided as a result of a Force Majeure Event.

16.4 If a Force Majeure Event substantially prevents, hinders or delays performance of the Purchase Order or these Terms and Conditions, for a period in excess of 20 Business Days then Medibank may, at its option, immediately terminate the Purchase Order in whole or in part by written notice to the Supplier.

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 and Terms and Conditions

The Purchase Order (or these Terms and Conditions to the extent they relate to an existing Purchase Order) may only be varied in writing by the agreement of Medibank and the Supplier, and any correspondence related to the variation must be 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.

22. Prudential Standard CPS 234

22.1 The Supplier must promptly, on request by Medibank, provide Medibank with such information and access to such personnel, systems and facilities (including any hosted systems), as may be required by Medibank, in order to enable Medibank to assess the information security capability of the Supplier.

22.2 The Supplier must promptly, on request by Medibank, provide Medibank with such information and access to such personnel, systems and facilities (including any hosted systems), as may be required by Medibank, in order to evaluate the design and operating effectiveness of any information security controls that protect information assets of Medibank that are managed by the Supplier.

22.3 The Supplier must promptly, on request by Medibank, provide Medibank with such information and access to such personnel, systems and facilities (including any hosted systems), as may be required by Medibank, in order to enable Medibank to assess whether the nature and extent of information security control testing is commensurate with;

- i. the rate at which vulnerabilities and threats change;
- ii. the criticality and sensitivity of the information assets;
- iii. the consequences of an information security incident;
- iv. the risks associated with exposure to environments where the Supplier is unable to enforce its information security policies; and
- v. the materiality and frequency of change to the information assets.

23. Audit

During the term and for a period of 2 years afterwards, Medibank may (by itself or through a professional advisor) carry out inspection and audit to determine whether the Supplier has complied with its obligations under these Terms and Conditions. The Supplier must provide Medibank and its representative with reasonable access to all relevant books, accounts, systems and records as are necessary to enable Medibank to carry out the inspection and audit. Each party must bear their own costs associated with conducting an inspection or audit.

Definitions

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

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Victoria.

Business Ethics Laws means the laws applicable to a person carrying on a business in relation to the following:

- (a) fundamental human rights and in particular the prohibition of:

- (i) Modern Slavery; and
 - (ii) organising or supporting any form of discrimination amongst its employees or towards its suppliers and subcontractors;
- (b) labour, immigration and prohibition of illegal work;
- (c) anti-bribery and corruption, including prohibition of bribery of governmental officials or any other giving or receiving of bribes between private commercial parties in connection with conducting business, including the *Criminal Code Act 1995* (Cth).

Confidential Information means any information that is by its nature confidential, is designated by Medibank as confidential, or that the Supplier knows or ought reasonably to know is confidential and which is disclosed, made available, communicated or delivered to the Supplier (or any of the Supplier's employees, officers, agents or contractors) directly or indirectly in connection with the Purchase Order and these Terms and Conditions and includes:

- (a) the terms of the Purchase Order and these Terms and Conditions;
- (b) information relating to Medibank's business, affairs, financial position, internal management, structure, policies, practices, procedures, strategies, employees, contractors and suppliers, including any Personal Information of individuals; and
- (c) information that has any actual or potential commercial value to Medibank,

but excludes information which:

- (d) is in or which subsequently enters the public domain other than as a result of a breach of the Purchase Order and these Terms and Conditions;
- (e) the Supplier can demonstrate was in the Supplier's possession and not subject to an obligation of confidence prior to the date of the Purchase Order;
- (f) the Supplier can demonstrate it was independently developed by the Supplier; or
- (g) is lawfully obtained by the Supplier from another person entitled to disclose such information.

Contract Material means all materials or items created by or on behalf of the Supplier in the course of providing the Goods/Services under the Purchase Order or these Terms and Conditions.

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.

Force Majeure Event means:

- (a) an act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
- (b) strikes or other industrial action, other than strikes or other industrial action of some or all of a Party's employees; and
- (c) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or pandemic or epidemic,

and expressly excludes any act or omission of the Supplier (except where that act or omission was caused by a Force Majeure Event).

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 Rights means all intellectual property rights, whether existing now or in the future, including copyright, patents, trademarks, designs, trade secrets, know-how, an application for any of the foregoing, and any rights of a similar nature.

Modern Slavery means modern slavery as defined by the *Modern Slavery Act 2018* (Cth) and any relevant regulations or ancillary legislation published in respect of it, as amended from time to time.

Personal Information has the meaning given to it in the Privacy Act.

Privacy Act means *Privacy Act 1988* (Cth).

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.

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.