



Standard Terms and Conditions

1. Contract

- 1.1 By accepting a written or verbal order for goods or services placed by IRT (**Order**), or supplying Goods or Services, the supplier of the Goods or Services (**Supplier**) agrees that:
- (a) a binding agreement between IRT and the Supplier is created which comprises these Terms and Conditions and the Order (**Contract**); and
 - (b) these Terms and Conditions will prevail over, and apply to the exclusion of, any other terms and conditions, whether or not notified to IRT.
- 1.2 Notwithstanding clause 1.1, if the Supplier has a formal written agreement duly executed by an authorised representative of IRT, these Terms and Conditions will apply in conjunction with that agreement and the terms of that agreement will prevail to the extent of any conflict.

2. Provision of Goods and Services

- 2.1 The Supplier must provide all Goods and Services in accordance with the Contract.
- 2.2 The Supplier must deliver the Goods or perform the Services in accordance with any location, timing and other instructions in the Order. The Supplier must keep IRT informed of any delays or other matters which may affect the delivery of Goods or provision of Services.
- 2.3 Each delivery of Goods must be accompanied by a delivery advice quoting, as relevant, the Order number, description of the Goods supplied, item ID, part number and quantity delivered. Goods must be suitably packed with the minimum of packaging material so as to ensure the safe delivery, using environmentally friendly packaging material where practicable.
- 2.4 IRT may, at any time before delivery, change or cancel all or part of the Order by giving the Supplier notice. If, prior to receiving notice from IRT, the Supplier has incurred expense in arranging for the provision of Goods or Services, IRT agrees to reimburse the Supplier for the reasonable and demonstrable direct costs legitimately incurred by the Supplier in relation to the Goods or Services, provided the Supplier mitigates any such costs.
- 2.5 Risk of loss of or damage to Goods passes to IRT upon delivery unless the Order includes installation of Goods in which case risk of loss of or damage to those Goods passes upon completion of installation. Clear and complete title to Goods, free of any encumbrances, will pass to IRT on the earlier of acceptance of, or payment for, the Goods.

3. Quality

- 3.1 IRT may:
- (a) inspect and test any Goods at any time;
 - (b) supervise, inspect or audit the performance of any Services or the results of such Services;
 - (c) audit the Supplier's compliance with its obligations under the Contract at any time on the provision of 14 days' notice including requiring copies of National Police Certificates, licences, registrations, insurances and proof of vaccination;
 - (d) direct the Supplier to provide any information or cooperation reasonably necessary to prove the Supplier's compliance with its obligations under the Contract, and where such information or cooperation is required to respond to a Government authority, department, agency or regulator, the Supplier must respond within the timeframe determined by the relevant authority, department, agency or regulator; and
 - (e) direct the Supplier to suspend provision of Goods or Services in the event of an actual or suspected breach (determined by IRT acting reasonably) of any obligations under the Contract.
- 3.2 IRT can reject Goods or Services which do not comply with the Contract within thirty days of Goods being delivered (or where relevant, installed) or Services being completed. If IRT rejects any Goods or Services, the Supplier must, at IRT's option, without cost to IRT, within 7 days:
- (a) refund any payments made by IRT in respect of the

rejected Goods or Services (and in the case of Goods remove the rejected Goods); or

- (b) repair or replace the rejected Goods or re-perform the Services.
- 3.3 Goods or Services repaired, replaced or re-performed will be subject to the same Warranty Period as the original Goods or Services commencing from the date on which the Goods were delivered or Services completed following the repair, replacement or re-performance.

4. Warranties

- 4.1 The Supplier warrants that:
- (a) all Goods supplied are new and in good condition, are free from defects in design, materials and workmanship, at least of merchantable quality and fit for their intended purposes and the Goods and personnel involved in the provision of the Goods comply with all relevant Standards;
 - (b) all Services will be performed to a high standard of professional care and skill by appropriately trained and qualified personnel and the Services and personnel performing the Services comply with all relevant Standards and IRT's reasonable and lawful directions;
 - (c) all Goods may be on-sold, and the warranties in respect of Goods may be assigned, by IRT to its customers; and
 - (d) the Goods, Services and their use and supply will not breach any obligation of confidentiality or infringe any Intellectual Property of any person.
- 4.2 The Supplier warrants that it has conducted all relevant checks required by law for the employment or engagement of staff, contractors or volunteers involved in providing the Goods or Services. In particular that:
- (a) for each employee or contractor who is reasonably likely to have access to IRT customers when providing Services:
 - (i) the Supplier holds a National Police Certificate which is less than three years old and which does not disclose any conviction for murder or sexual assault or any conviction with a sentence of imprisonment for any other form of assault;
 - (ii) where a National Police Certificate discloses any offences, the Supplier has provided those details to IRT; and
 - (iii) where a person has been a citizen or permanent resident of a country other than Australia, that person has made a statutory declaration that they have never been convicted of murder or sexual assault or convicted of and sentenced to imprisonment for any other form of assault;
 - (b) each employee or contractor engaged in ACT holds a valid Working with Vulnerable People registration, unless exempt under the *Working With Vulnerable People (Background Checking) Act 2011*; and
 - (c) the Supplier has a robust system in place to ensure that employees and contractors to whom 4.2(a) applies, promptly notify the Supplier if they are convicted of those offences during the term of their National Police Certificate and in which case the Supplier will immediately disclose this to IRT.
- 4.3 Where the Supplier is required to make a disclosure under clause 4.2(a)(ii) or 4.2(c), IRT may direct the Supplier not to permit the relevant person to provide Services in its absolute discretion.
- 4.4 Where the Goods are Food, the Supplier warrants that it:
- (a) complies with the Australia New Zealand Food Standards Code; and
 - (b) holds all registrations and licences required by relevant State or Territory food authorities.
- 4.5 Where the Supplier is the trustee of a trust, the Supplier warrants that under the terms of the trust deed it has full legal capacity and power to enter the Contract and be indemnified out of the assets of the trust for all obligations and liabilities arising under the Contract, and that it has

entered into the Contract both in its capacity as trustee and in its personal capacity.

5. Fee

- 5.1 In return for the provision of Goods or Services, IRT will pay to the Supplier the amount specified in the Order (**Price**).
- 5.2 The Supplier may only invoice IRT, and must issue such invoice promptly, after all Goods have been delivered (or where relevant installed) or Services completed. The Supplier's invoice must claim no more than the Price, identify any Order number provided by IRT, bear a unique invoice number, be a valid tax invoice for GST purposes and be accompanied by documentation substantiating the amount claimed where IRT requests. Each invoice must relate to only one Order and must be submitted electronically via the Coupa platform.
- 5.3 IRT will pay all correctly rendered and undisputed invoices within 30 days of the invoice date. In addition to any other rights, IRT may deduct any amount owed by the Supplier to IRT under or in connection with the Contract or any other agreement between the Supplier and IRT (including under any indemnity).

6. Risk management

- 6.1 The Supplier must carry out its obligations under the Contract in a way that is safe and without risk to the health of its employees and contractors, IRT's employees, contractors, customers, volunteers and visitors, and any person who may come into contact with the Goods or Services.
- 6.2 Without limiting any other obligation, the Supplier must, and must ensure that its representatives:
 - (a) comply with all work health and safety Standards relevant to the delivery of Goods or performance of Services; and
 - (b) immediately report to IRT any property damage, personal injury or death arising from the provision of Goods or Services.
- 6.3 The Supplier agrees to take reasonable steps to assess and address potential modern slavery risks in its operations and supply chains.

7. Intellectual Property

- 7.1 All Intellectual Property owned by a party prior to the date of the Contract (**Background IP**) remains the property of that party.
- 7.2 All Intellectual Property created in connection with the provision of Services (**Project IP**) will be owned by IRT and, the Supplier:
 - (a) assigns all Project IP to IRT; and
 - (b) grants IRT a perpetual, irrevocable, non-exclusive, worldwide, transferrable, paid up, royalty free licence in respect of its Background IP to the extent necessary for IRT to fully exercise its rights in Project IP.
- 7.3 The Supplier must not use any IRT Background IP including brands, logos, trade marks and names without IRT's prior written permission.

8. Confidentiality

- 8.1 Subject to clause 8.2, each party must ensure that all Confidential Information of the other party is kept confidential, safe and secure and not disclose it to any person other than to the extent necessary to perform its obligations under the Contract or to its professional advisers or employees who need to know.
- 8.2 A party is not required to keep Confidential Information confidential:
 - (a) to the extent required by law, court order or any governmental or regulatory authority; or
 - (b) where Confidential Information has entered the public domain other than as a result of a breach of the Contract.
- 8.3 On completion of the provision of Goods or Services under the Contract, the Supplier must return or destroy, at IRT's election, any IRT Confidential Information.

9. Privacy

- 9.1 The Supplier agrees that IRT may collect, hold, use and disclose any personal information provided to IRT in accordance with IRT's Privacy Policy available at www.irt.org.au.
- 9.2 The Supplier must not cause or allow anything to be done that may result in IRT breaching its obligations under the *Privacy Act 1988 (Cth)* and must comply at all times with the Australian Privacy Principles and Notifiable Data Breaches scheme as if they apply to the Supplier.
- 9.3 Where the Supplier suspects a data breach may have occurred involving any data held by the Supplier related to the provision of Goods or Services, the Supplier agrees:
 - (a) it must immediately notify IRT;
 - (b) IRT has the sole right of determining whether or not an eligible data breach has occurred;
 - (c) it must provide IRT with all information and assistance it reasonably requires; and
 - (d) in the case of an eligible data breach occurring, IRT is irrevocably authorised to carry out all necessary notifications.

10. Liability and indemnity

- 10.1 The Supplier is liable for, and indemnifies IRT, its officers, employees and agents against, all loss, damage, claim, injury or expense sustained or incurred in connection with:
 - (a) performance or breach of the Contract; or
 - (b) an act or omission of the Supplier or its representatives in connection with the Contract, whether negligent, willful or not.
- 10.2 The Supplier's liability in clause 10.1 will be reduced proportionally to the extent that it is caused or contributed to by IRT, its officers, employees and agents.
- 10.3 The Supplier agrees that it is wholly responsible for the security of its systems and processes and IRT will not be liable for any loss or damage suffered by the Supplier as a result of a breach of that security or fraud. In particular, where IRT makes a payment in accordance with an invoice which purports to be from the Supplier, and the funds paid by IRT are not received by the Supplier as a result of a breach of the Supplier's security or fraud, IRT will be deemed to have paid that invoice.

11. Insurance

- 11.1 IRT will notify the Supplier which of the following insurances the Supplier must effect and maintain. Where IRT specifies that an insurance applies, the Supplier must hold a current policy with a reputable insurer for an amount not less than the minimum amounts shown:
 - (a) workers compensation insurance – an amount necessary to cover any potential liability under statute or at common law;
 - (b) public liability insurance – minimum \$10,000,000 per occurrence;
 - (c) product liability insurance – minimum \$10,000,000 per claim;
 - (d) professional indemnity insurance – minimum \$2,000,000 per claim.

12. Termination

- 12.1 IRT may terminate the Contract in whole or in part by providing the Supplier with 14 days' written notice.
- 12.2 As well as IRT's other rights and remedies, IRT may terminate the Contract in whole or part immediately by notice if the Supplier:
 - (a) fails to deliver Goods or perform Services by the date required by the Contract;
 - (b) breaches any other term of the Contract and fails to remedy the breach within 7 days of IRT requesting its remedy or where in IRT's reasonable opinion the breach is not capable of remedy; or
 - (c) becomes insolvent (to the extent permitted by law).
- 12.3 On termination of the Contract, IRT:
 - (a) is only liable to pay the Price (if any) in relation to Goods

delivered or Services performed up to the date of termination; and

(b) can recover from the Supplier any part of the Price paid for Goods or Services which were not provided.

12.4 The expiry or termination of the Contract does not affect any right that has accrued to, or obligation that has arisen in respect of, a party before the expiry or termination. Each party's obligations and rights under the Contract and any terms which must survive to give effect to those obligations and rights, survive the expiry or termination of the Contract.

13. General

13.1 . All termination notices must be in writing and delivered to the other party by personal service, post or email in accordance with contact details provided by that party. Notices delivered in person or by email are deemed received at the time of delivery by the sender, posted notices are deemed received on the third business day after posting.

13.2 A provision of the Contract or a right created under it may not be waived or varied except in writing signed the party intended to be bound. A failure of a party to exercise a right arising out of the Contract does not constitute a waiver of that right.

13.3 Any provision of the Contract which is or becomes unenforceable, is to be read down to the minimum extent to be enforceable, or if that is not possible, severed from the Contract without affecting the remaining provisions of the Contract.

13.4 The Supplier may not assign or novate its rights or obligations under the Contract without IRT's prior written consent which may be withheld at IRT's sole discretion.

13.5 The Supplier may not subcontract any obligations under the Contract without IRT's prior written consent. Where the Supplier subcontracts any obligation under the Contract, the Supplier remains liable for the acts and omissions of any subcontractor as if they were acts or omissions of the Supplier.

13.6 These terms and conditions are not to be construed to IRT's disadvantage merely because IRT prepared them.

13.7 The Contract is governed by the laws of New South Wales, Australia. The parties submit to the jurisdiction of the courts of that state.

14. Interpretation

14.1 In these terms and conditions, unless the context clearly indicates otherwise:

(a) **Confidential Information** means any information in any form which is by its nature confidential or non-public, is designated by a party as confidential at the time of its disclosure, or a party knows or ought to know is confidential and includes any personal information obtained by the Supplier in connection with the Contract.

(b) **Food** has the meaning in section 5 of the *Food Standards Australia New Zealand Act 1991 (Cth)*.

(c) **Goods** means goods described in an Order.

(d) **Intellectual Property** means all present and future rights in or in relation to copyright, trade marks, designs, patents, know-how, inventions, confidential information and any other results of intellectual activity, whether or not registered or registrable.

(e) **IRT** means Illawarra Retirement Trust ABN 52 000 726 536.

(f) **Services** means services described in an Order.

(g) **Standards** includes all laws, regulations, statutory instruments, principles, codes, standards, licences, certificates, registrations, Australian Standards, Aged Care Quality Standards and IRT policies notified to the Supplier.

(h) **Warranty Period** means, in respect of Services, the greater of 12 months from the date of completion or the warranty period specified in the Order, and in respect of Goods, the greater of 12 months from the date of delivery (or where relevant the date of installation), the manufacturer's warranty period, or the warranty period specified in the Order.

14.2 In these terms and conditions, unless expressly provided otherwise:

(a) headings are for convenience only and do not affect interpretation of the Contract;

(b) words in the singular include the plural and vice versa;

(c) includes, including and similar expressions are not words of limitation;

(d) money amounts are stated in Australian currency unless otherwise specified; and

(e) a reference to a law includes a modification or replacement of it and subordinate legislation issued under it.