

1 Definition

1.1 In these Terms and Conditions:

Agreement means these Terms and Conditions, the Supplier Application Form, and any subsequent Contract Schedule(s) entered into between the Company and the Supplier in respect to specific Goods and/or Services to be provided to the Company by the Supplier;

The Company means City Care Limited and its subsidiaries (if any);

The Supplier means the supplier named on the Supplier Application Form;

Goods means all goods supplied by the Supplier to the Company from time to time at the request of the Company;

Services means all services provided by the Supplier to the Company from time to time at the request of the Company;

GST means goods and services tax imposed pursuant to the GST Act;

GST Act means the New Zealand Goods and Services Tax Act 1985 as amended or replaced.

2 Appointment of Supplier

2.1 The Company appoints the Supplier to provide Goods and/or Services, and the Supplier accepts the appointment, on and subject to these Terms and Conditions. The Supplier acknowledges that it is not the exclusive supplier of goods and services of the same or a similar nature as the Goods and Services and that the Company may use other suppliers and providers to provide such goods and/or services.

3 Application of Terms and Conditions

3.1 Unless the Company advises otherwise in writing, these Terms and Conditions apply to all contracts between the parties relating to the supply by the Supplier of Goods and/or Services to the Company, notwithstanding anything that may be stated to the contrary in any quotation, order or other documentation.

3.2 Notwithstanding the above, the parties acknowledge and agree that job-specific Contract Schedules may subsequently be entered into in writing between the Company and the Supplier. Where there is any conflict between the documents entered into by the Company and the Supplier, the following order of precedence shall apply:

- (a) the Contract Schedule relevant to the Goods and/or Services being provided;
- (b) any Special Conditions set out in the Schedule attached to these Terms and Conditions;
- (c) these Terms and Conditions.

4 Term

4.1 This Agreement shall commence upon signing and shall continue in force unless and until terminated in accordance with its terms.

5 Supply of Goods and/or Services

5.1 The Supplier shall provide the Goods and/or the Services and undertakes that the Goods and/or the Services shall be provided, in a proper and efficient manner and in accordance with all applicable rules and laws (whether statutory or otherwise). In providing the Goods and/or the Services, the Supplier will:

- (a) comply with all relevant and applicable laws, regulations, by-laws in force from time to time directly or indirectly relevant to the provision of the Services and maintain all licences, approvals, permits and authorisations required by law in order for it to provide the Services;
- (b) comply with best industry practice, being the best practice or standard for that type of activity or service adopted by a supplier or provider in the same industry as the Supplier;
- (c) comply with all applicable health and safety policies including those advised by the Company from time to time;
- (d) carry out and complete the Services and/or provide the Goods at such time as the Company's program requires and to meet the Company's timeframes;
- (e) comply with all reasonable requirements and instructions of the Company and report to any person advised by the Company.

5.2 The Goods will comply with their description and specifications, be free from any defects of any nature whatsoever and be fit for their purpose.

5.3 The Supplier shall act with the utmost good faith in all its dealings with the Company. The Supplier warrants that any representations, whether oral or in writing, that it has made to the Company as to the Supplier's existing and proposed business, experience and any other relevant matter before entering into these Terms and Conditions are true and correct.

5.4 The Supplier will supply, at its own cost, everything required for the performance of the Supplier's obligations to the Company.

6 Price and Payment

6.1 The price payable by the Company for the Goods and/or Services will be the amount quoted, or otherwise advised in writing, to the Company and accepted or confirmed in writing by the Company. If no price has been quoted and accepted by the Company, the price payable for the Goods and/or Services shall be the lesser of (a) the prevailing market rates payable for such Goods and/or Services; or (b) the current rates charged by the Supplier to the Company for goods and/or services of the same or a similar nature.

6.2 The Company purchases the Goods and/or Services for the price and unless expressly stated by the Company to the contrary the price is on a "free-instore" basis to the intent that the Company shall not be liable for any duties, taxes or related costs in respect to the Goods and/or Services.

6.3 Except where this Agreement expressly provides otherwise or there is a breach of the Agreement by the Supplier, any invoice received by the Company which complies with the Agreement will be payable at the end of the month following the month of invoice by direct credit.

6.4 Other than GST, the Supplier will be responsible for all taxes, levies, premiums, assessments, or other payments in connection with the provision of the 8.3 Goods and/or Services and performance of its obligations under these Terms and Conditions.

6.5 The Company may set off against any monies owed by the Supplier to the Company any monies which the

- Company owes to the Supplier so that the Company's obligations shall be to pay the net balance only.
- 6.6 The Company will only pay invoices that reference a valid Citycare purchase order.
- 6.7 The Parties agree that if the Supplier has provided a GST number, the Company may elect to issue a Buyer Created Taxable Supply Information (BCTSI) invoice in respect of a supply between the Parties. Where the Company elects to issue a BCTSI invoice in respect of a supply, the Supplier confirms that it will not also issue an invoice/Tax Invoice/Taxable Supply Information invoice in respect of that supply.
- 6.8 The Supplier will notify the Company within 3 working days if the GST registration status changes at any time for that noted in the Company Details section of this form.
- 7 Ownership, Risk and Delivery**
- 7.1 Unless otherwise agreed in writing, the Supplier shall be responsible for the cost of and arranging transportation of the Goods. All Goods shall be delivered according to schedule and without delay.
- 7.2 Risk in respect of the Goods shall pass to the Company on delivery of the Goods to the Company in accordance with the Company's requirements.
- 7.3 The title to Goods will pass to the Company when the Goods have been paid for in full. The Company may use the specific Goods in the ordinary course of business before the Goods have been paid in full.
- 7.4 All Goods must be supplied to the Company without any security interests, liens, charges or other encumbrances.
- 7.5 Without the prior written consent of the Company the Supplier may not re-take possession of any Goods 8.4 which have been ordered and delivered to the Company.
- 7.6 Notwithstanding that these Terms and Conditions may create a "Security Interest", as that term is defined in the Personal Property Securities Act 1999, in favour of the Supplier, the Supplier agrees that it will not register any financing statement(s) on the Personal Property Securities Register in respect to its rights under this Agreement.
- 8 Indemnity, liability and warranties**
- 8.1 The Supplier shall at all times indemnify and keep the Company indemnified against all actions, proceedings, claims, costs, liabilities, and expenses which may be taken or made against the Company (or which the Company incurs, or which become payable by the Company) directly or indirectly as a result of, or arising out of: -
- (a) the failure by the Supplier to properly provide the Goods, perform the Services and/or its obligations under this Agreement;
- (b) a breach by the Supplier of this Agreement;
- (c) any wrongful act performed or any omission by the Supplier.
- 8.2 The Supplier shall maintain adequate insurance cover with a reputable insurer acceptable to the Company in respect of the Supplier's potential liability under this Agreement, including product and public liability insurance and professional indemnity insurance where Services are provided. Upon request, the Supplier will provide the Company with a certificate of insurance confirming the insurance cover held and the currency of
- it.
- 8.3 The Supplier warrants, undertakes and represents to the Company that:
- (a) it has the expertise, experience, resources, capacity and ability to, and will, perform and discharge its obligations effectively under this Agreement in accordance with all applicable timeframes, efficiently, diligently and in accordance with best industry practice;
- (b) the statements and representations that it has made in, and in relation to, this Agreement are true and correct;
- (c) it has all necessary rights and licences required to provide the Services;
- (d) all Goods, and any materials and/or consumables it uses for the purposes of, or incorporates in, the Services will be free from all defects, will be new and title to the same will immediately pass to the Company in accordance with clause 7;
- (e) it will pass on to the Company the benefit of any warranty or guarantee received from any other person in respect of the Goods and/or Services to the intent that the Company may have recourse against those persons though the Supplier for a breach of any warranty or guarantee.
- 8.4 Notwithstanding any other provision of this Agreement, the maximum liability of the Company under or in connection with this Agreement in respect of all or any events or breaches occurring within any period of 12 consecutive months will be an amount equal to 25% of the total amount of fees paid by the Company to the Supplier under this Agreement in the 12-month period referred to in this clause. Nothing express or implied in this Agreement or under the law of contract or otherwise will confer liability on the Company in respect of loss of profits or any indirect or consequential loss, damage, costs or expense of any kind suffered or incurred by the Supplier under or in connection with this Agreement.
- 9 Intellectual property rights**
- 9.1 All intellectual property which is owned by the Company will remain the property of the Company and the use or access to that property by the Supplier during the course of this Agreement shall in no circumstances provide the Supplier with any rights to the intellectual property.
- 9.2 All intellectual property discovered or produced by the Supplier and/or its representatives in the course of providing the Services of any sort shall vest in the Company and must immediately be disclosed by the Supplier to the Company.
- 9.3 All intellectual property referred to in clause 9.2 will be the sole property of the Company. The Supplier will assist the Company in doing everything necessary (at the Company's expense) to obtain all rights to such intellectual property
- 10 Confidentiality**
- 10.1 In this clause "confidential information" means:
- (a) the intellectual property referred to in clause 9; and
- (b) any information which is within or may come to the knowledge of the Supplier and/or its representatives during the course of this

Agreement concerning the existing or future business, finances, administration or operations of the Company or the Company's customers.

10.2 The Supplier will during the currency of this Agreement and also after it has been terminated:

- (a) not disclose any confidential information to any person;
- (b) use its best endeavours to prevent the disclosure or publication of any confidential information;
- (c) not use any confidential information for personal benefit as distinct from the benefit of the Company;
- (d) not use or attempt to use any confidential information in any manner which may injure or cause loss whether directly or indirectly to the Company.

10.3 The Supplier agrees upon termination of this Agreement immediately to deliver up to the Company all confidential information in its possession and agrees not to retain any copies of such information however stored or recorded.

10.4 The provisions of this clause 10 will not apply to information which has entered the public domain other than as a direct or indirect result of any act or omission of the Supplier or its representatives.

10.5 The Supplier shall ensure that its representatives comply with the provisions of clauses 9 and 10.

11 Termination

11.1 The Company may terminate this Agreement with immediate effect by giving written notice to the Supplier in the event that:

- (a) the Supplier breaches this Agreement, and such breach is incapable of remedy;
- (b) the Supplier fails to remedy any breach of this Agreement within 7 days of being given notice by the Company requiring the breach to be remedied;
- (c) the Supplier commits an act of bankruptcy or makes or enters into any arrangement or composition with its creditors, or being a company is placed into receivership or statutory management, or enters into liquidation whether compulsory or voluntary, or suffers or allows any execution to be levied on its property or obtained against it.

11.2 The Company may terminate this Agreement at any time by giving one month's written notice to the Supplier.

11.3 Termination of this Agreement shall not affect the rights and obligations of the parties that have accrued prior to termination or by their nature are intended to survive termination.

12 Dispute Resolution

12.1 If a dispute arises, the parties shall meet in the spirit of goodwill and attempt to resolve the matter by negotiation

or mediation.

13 Assignment

13.1 The Supplier shall not be entitled to assign or subcontract any of its rights and duties under this Agreement without the prior written consent of the Company.

13.2 Notwithstanding any other provision of this Agreement, in the event that City Care Limited's business is restructured into one or more new entities, provided that such entities have the same ultimate ownership as City Care Limited, the Supplier agrees that this Agreement may be assigned, either in whole or in part, to such new entity or entities by City Care Limited giving written notice of such assignment and without the need for any further consent or approval of the Supplier. In the event that a partial assignment is not possible or practical, City Care Limited and the Supplier will enter into new Agreement(s) with the relevant new entity or entities on the same commercial and legal terms as contained in this Agreement.

14 Relationship

14.1 The relationship between the Company and the Supplier is that of buyer and seller. Nothing in this Agreement creates a partnership, joint venture or employment relationship or appoints either party the agent or the other. The Supplier may not in any way bind the Company, enter into agreements on behalf of, or incur liabilities for the Company.

15 Variations to these Terms and Conditions

15.1 The Company may in its absolute discretion change these Terms and Conditions at any time by publication on the Company's website www.citycare.co.nz. The change will take effect from the time specified. A written Terms and Conditions may only be varied by written agreement between the parties.

16 Waivers

16.1 Any Party may waive a right reserved to that Party by this Agreement, but any such waiver shall be binding only if in writing and shall apply only to the particular occasion, circumstance or event to which the waiver relates.

17 Invalidity

17.1 If any provision of this Agreement shall be held to be invalid for any reason, such invalidity shall not affect the validity or operation of any other provision of this Agreement.

18 Governing law

18.1 New Zealand law governs this Agreement and any modifications and variations to it and the parties submit to the exclusive jurisdiction of New Zealand courts.

19 Special Conditions

19.1 The parties agree the Special Conditions in the Schedule. In the event there is any inconsistency between the Special Conditions and any of the other terms of this Agreement, the order of precedence set out in clause 3.2 shall prevail.