

## 1. Definitions

- 1.1 "Seller" shall mean UHG Trading Pty Ltd (ACN 664 392 054) trading as Unicare Health, and its successors and assigns.
- 1.2 "Client" means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.
- 1.3 "Contract" shall mean the agreement entered upon between the Seller and the Client, for the supply of Goods and/or Services at the agreed Price, and subject to these Terms and Conditions.
- 1.4 "Guarantor" shall mean that person (or persons), institution or entity, agreeing herein to be liable for the debts of the Client on a principal debtor basis.
- 1.5 "Goods" shall mean all Goods supplied by the Seller to the Client, and where the context so permits, shall include any provision of Services as defined in clause 1.8 and goods supplied in the course of providing Services.
- 1.6 "Order" means any purchase order, instruction or request for Goods or Services placed by a Client.
- 1.7 "Quote" means any written description of the Goods or Services including any estimate or statement of the Seller's charges for the required Goods.
- 1.8 "Services" shall mean all Services provided by the Seller to the Client, including any advice or recommendations and, where the context so permits, shall include any supply of Goods as defined in clause 1.5.
- 1.9 "Price" shall mean the cost of the Goods as agreed between the Seller and the Client, and as defined in clause 4.1.
- 1.10 "Manufacturer" shall mean the Producer or Manufacturer of Goods provided to the Seller for resale or remanufacture.
- 1.11 "Terms and Conditions" shall mean the Terms and Conditions of Trade constituting this document.

## 2. Acceptance

- 2.1 Any Orders received by the Seller from the Client for the supply of Goods, and/or the Client's acceptance of any Quote or Goods or Services supplied by the Seller, shall constitute acceptance of these Terms and Conditions.
- 2.2 Where more than one Client has entered into the Contract, all the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 These Terms and Conditions apply to all transactions between the Seller and the Client relating to the provision of Goods and Services. This includes all Quotes, Contracts, Orders and variations thereof. The Seller may amend any details in a Quote by notice in writing to the Client and such amended details supersede any relevant prior Quote. These Terms and Conditions may only be amended or rescinded in accordance with these Terms and Conditions, or with the written consent of the Seller's management.
- 2.4 None of the Seller's agents or representatives shall be authorised to make any representations or statements, conditions or agreements whatever, not expressed by the Seller's management in writing, nor shall the Seller be bound by any such unauthorised statements etc.
- 2.5 The Client undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or other details, including but not limited to, changes in the Client's address, contact numbers or business practice.

## 3. Goods and Services

- 3.1 The Goods and Services shall be as described on the quotation, or invoices, work authorisation, or other work commencement forms, as provided by the Seller to the Client.
- 3.2 The Seller shall be entitled to license or sub-contract the Goods and Services, or portion thereof, and all rights and obligations without the Client's consent.

## 4. Price and Payment

- 4.1 At the Seller's sole discretion the Price of the Goods shall be either:
  - (a) as invoiced by the Seller to the Client in respect of the Goods supplied; or
  - (b) as quoted by the Seller (where the quote is expressed as a fixed amount and not an estimate) to the Client and subject to clause 4.2, which shall be binding upon the Seller, provided that the Client accepts in writing the Seller's quotation within fourteen (14) days.
- 4.2 Any variation from the specifications or plan of scheduled works shall be charged for on the basis of the Seller's quotation, and shall be invoiced as a variation. Payment for all variations shall be made in full on completion.
- 4.3 The Price shall be increased by the amount of Goods and Services Tax (GST), and any other taxes and duties which may be applicable, except as expressly included in the Seller's quotation.
- 4.4 Payment shall be made by cash on delivery, by Client's cheque or bank cheque, credit card or direct credit transfer, or by any other method as agreed in the Contract.
- 4.5 At the Seller's sole discretion a deposit may be required. The amount or percentage of the Price shall be stipulated in the Contract, and shall become immediately due and payable.
- 4.6 Time for payment of the Goods shall be of the essence, and shall be as stated on the invoice or quotation, or the Client's order forms. If no time is stated, then payment shall be on delivery of the Goods to the Client's address.
- 4.7 At the Seller's sole discretion for certain approved Clients, payment shall be due within either seven (7) days of invoice date, or thirty (30) days from end of month of invoice date, whichever is stated on the invoice.
- 4.8 The Seller may withhold delivery of the Goods until the Client has paid for them, in which event payment in full shall be made before the delivery date.
- 4.9 The Client shall not offset or withhold any amounts or payments due from the Seller against the Price of the Goods.

## 5. Delivery of Goods and Services

- 5.1 Delivery of the Goods shall be made to the Client's address, and the Client shall make all arrangements necessary to take delivery of the Goods, whenever they are tendered for delivery. Alternatively, delivery of the Goods shall be made to the Client at the Seller's address.
- 5.2 Delivery of the Goods to a carrier nominated by the Client, or failing such nomination, to a carrier appointed at the discretion of the Seller, shall be deemed as delivery of the Goods to the Client. The carrier so nominated or appointed shall be deemed as the Client's agent.
- 5.3 The costs of carriage and any insurance which the Client reasonably directs the Seller to arrange, shall be reimbursed by the Client without any offset or other withholding whatever, and shall be due on the agreed date for payment of the Goods.
- 5.4 Delivery of the Goods to a third party nominated by the Client shall be deemed as delivery to the Client, for the purpose of fulfilment of the Contract.
- 5.5 The Client shall take delivery of the Goods tendered, notwithstanding that the quantity so delivered may be either more or less than the quantity ordered, provided that:
  - (a) such discrepancy in quantity shall not exceed 5%; and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.6 Failure by the Seller to deliver shall not entitle either party to construe or treat the Contract as breached or null and void.
- 5.7 The Seller shall not be liable for any direct or indirect consequential losses or damages whatever, due to failure by the Seller to deliver the Goods or any part thereof timeously or at all.

## 6. Ownership and Risk

- 6.1 All risk for the Goods shall pass to the Client on delivery, notwithstanding that the Seller shall retain ownership of and property in the Goods, until payment in full has been made.
- 6.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Client, the Seller shall be entitled to receive all insurance proceeds payable for the damaged Goods, without prejudice to any of its other rights or remedies under these Terms and Conditions, including the right to receive payment of the balance of the Price for the undamaged Goods, whether or not the Price has become payable under the Contract.
- 6.3 The production of these Terms and Conditions by the Seller shall be deemed sufficient evidence of the Seller's rights to receive any such insurance proceeds, without the need for further enquiry by any third party.

## 7. Client's Disclaimer

- 7.1 The Client acknowledges that it purchases the Goods relying solely upon its own skill and judgment, and that the Seller shall not be bound by nor held responsible for any term or condition, representation or warranty other than the warranty given by the Manufacturer of the Goods, which shall be exclusive to the Client and not transferable to any subsequent Client.
- 7.2 The Client disclaims any right to amend or rescind, repudiate or cancel the Contract, or to sue for damages or claim restitution, arising out of any misrepresentation whatever made by the Seller's agents or representatives.

## 8. Defects and Returns

- 8.1 The Client shall inspect the Goods on delivery, and shall within thirty (30) days thereafter notify the Seller in writing of any alleged defect, damage or discrepancy in quantity or failure to comply with the description or quotation. The Client shall then afford the Seller the opportunity to inspect the Goods within a reasonable time following delivery. If the Client fails to comply with these provisions, the Goods shall be conclusively deemed to be in accordance with the Contract and these Terms and Conditions and free from any defect, or damage discrepancy, or non compliance.
- 8.2 Where the Seller agrees in writing that the Client is entitled to reject such defective or damaged Goods, the Seller's liability shall be limited to either replacing or repairing the Goods at the Seller's discretion, provided that:
- (a) the Client has complied with the provisions of clause 8.1; and
  - (b) the Seller shall not be liable for Goods which have not been stored or used in a proper manner, or not operated in accordance with the instructions of the Manufacture of the Goods; and
  - (c) the Goods are returned at the Client's cost, within thirty (30) days of the delivery date; and
  - (d) the Goods are returned in the condition in which they were delivered, with all packaging materials and instructions in as new condition as is reasonably possible in the circumstances.
- 8.3 The Seller may at its sole discretion accept returned Goods for credit, but may levy a handling and/or restocking fee of twenty percent (20%) of the value of such Goods, plus any freight costs incurred thereby.
- 8.4 Where Goods are supplied to the Client for demonstration or trial purposes then:
- (a) the trial period shall be limited to seven (7) days, unless otherwise agreed by the Seller; and
  - (b) the Goods shall be invoiced according to the quotation, or at the Seller's current Price should no alternative arrangements be agreed upon; and
  - (c) the Client shall be liable for any costs incurred to recover or replace, repair or service any missing or damaged Goods.
- 8.5 Cancellation of orders for non-standard product sizes and/or Custom manufacture will only be accepted on the basis that the client pays all costs incurred in manufacture, up to the date of cancellation.

## 9. Warranty

- 9.1 The Seller's warranty shall be the current warranty provided by the Manufacturer of the Goods. The Seller shall be under no obligation or liability for the Goods whatever, except as expressly detailed and stipulated in the Manufacturer's warranty conditions.
- 9.2 In the case of second-hand Goods, the Client acknowledges that:
- (a) it has had full opportunity to inspect such Goods; and
  - (b) it accepts the Goods in their condition with any defects or faults; and
  - (c) no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose; and
  - (d) any implied warranty for the Goods, statutory or otherwise, is expressly excluded; and
  - (e) the Seller shall not be held responsible for any loss or damage to the Goods or caused by the Goods, or any part thereof however arising.

## 10. Competition and Consumer and Fair Trading Acts

- 10.1 If the Goods or Services are of a kind such as to attract the operation of the Competition and Consumer Act 2010 (Cth) (CCA) including the Australian Consumer Law, certain conditions and warranties will be implied into the Contract and rights conferred upon the Client which cannot be excluded (**Non-Excludable Terms**).
- 10.2 If there are any Non-Excludable Terms, this clause 10 will apply to them.
- 10.3 The Client agrees with respect to any Non-Excludable Terms that the Seller's liability is, where permitted, limited to replacement (or the costs of replacement), the repair (or the cost of repair) of the Goods or re-performance (or costs of re-performance) of the Services.
- 10.4 Nothing in these Terms and Conditions is intended to exclude any Non-Excludable Term under the CCA or the Fair Trading Acts in each of the States and Territories of Australia giving effect to terms of that kind.

## 11. Intellectual Property

- 11.1 Any intellectual property rights incorporated in the design or manufacture of the Goods and/or Services shall remain vested with the Seller.
- 11.2 The Client warrants that it holds all necessary intellectual property rights in any document or material, design or drawing provided to the Seller for the supply of Goods and/or Services, and that there is not or will be no infringement of any rights or entitlements held by any third party.
- 11.3 The Client indemnifies and holds harmless the Seller for any claims made against the Seller, however arising from the Seller's use of any such document or material, design or drawing, or any other information provided by the Client.

## 12. Default

- 12.1 If at any time the Client is in default or breach of any condition or obligation of the Contract, including those relating to payment, the Seller may suspend or terminate the supply of Goods to the Client, and any of its other obligations under these Terms and Conditions, without prejudice to any other remedies the Seller may have. The Seller shall not be liable to the Client for any loss or damage suffered by the Client, or arising from the Seller thus exercising its rights.
- 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Seller for all costs and disbursements incurred thereby, including on a solicitor and own client basis, and in addition the Seller's nominees costs of collection and solicitors fees.
- 12.3 Interest on overdue invoices shall accrue daily from the date when payment became due until the date of payment, at a rate of twenty five percent (25%) per annum, and shall continue to accrue at this rate before and after any judgment at law.
- 12.4 The Seller shall be entitled to cancel all or any part of the Client's order which remains unperformed, without prejudice to any other remedies the Seller may have, and all amounts owing to the Seller shall immediately become payable whether or not due for payment, in the event that:
- (a) any payments to the Seller become overdue, or the Client prove unable to meet payments as they fall due; or
  - (b) the Client becomes insolvent, or convenes a meeting with its creditors, or proposes or enters into an arrangement with its creditors, or makes an assignment for the benefit of its creditors; or
  - (c) an administrator or receiver, liquidator (provisional or otherwise) or similar person is appointed over the Client, or any asset of the Client.
- 12.5 The Seller shall retain its right to recover and dispose of the Goods, and claim any loss attributable to default by the Client.

## 13. Title to Goods

- 13.1 Title to and property in the Goods shall not pass until the Client has paid all amounts owing for the Goods, and met all other obligations toward the Seller in terms of the Contract.
- 13.2 In the event of default or breach of the Contract by the Client, and until such time as title to the Goods shall pass from the Seller to the Client, the Seller may give notice in writing to the Client to return the Goods or any part thereof. Upon issue of such notice the rights of the Client to ownership or any other title to the Goods shall cease.
- 13.3 If the Client fails to return the Goods, the Seller or its agents may enter, as the Client's invitee, upon the land and into premises owned, occupied or used by the Client where the Goods are situated and take possession of the Goods, without being responsible for any damage caused thereby.

#### 14. Force Majeure and Cancellation

- 14.1 Neither the Seller nor the Client shall be liable for any default in fulfilling their obligations in terms of the Contract, attributable to Force Majeure i.e. any act of God, fire or storm, flood or drought, war or terrorism, strike or lock out, industrial action or other circumstances beyond the reasonable control of either party.
- 14.2 In the event of Force Majeure or such circumstances, the Seller may cancel the Contract or these Terms and Conditions, or cancel delivery of the Goods at any time before the Goods are delivered, by giving written notice to the Client.
- 14.3 The Seller shall not be liable for any consequential loss or damage whatever sustained by the Client or any third party, arising from such cancellation.

#### 15. Privacy Act

- 15.1 The Client and/or the Guarantor consent to the Seller soliciting a consumer credit report from an authorised agency, containing personal credit information about the Client and/or Guarantor, for assessment of its credit worthiness by the Seller.
- 15.2 The Client and/or the Guarantor consent to the Seller verifying such information with credit providers named in the Client's application for credit, or in a consumer credit report issued by an authorised agency.
- 15.3 The Client and/or the Guarantor consent to the Seller soliciting a consumer credit report for the purposes of collecting overdue payments on commercial credit.
- 15.4 The Client and/or the Guarantor consent to such personal credit information being retained and utilised by the Seller for the provision and marketing of Goods and/or Services, and implementation of all accounting procedures.
- 15.5 The Client and/or the Guarantor consent to the Seller providing information about the Client to authorised credit reporting agencies, for maintaining records and reporting on the Client's credit worthiness.

#### 16 PPSA and enforcement of security interest

- 16.1 The Client agrees that with respect to the enforcement of a security interest under or in connection with the Contract (including these Terms and Conditions), the following provisions of the Personal Property Securities Act 2009 (Cth) ("PPSA") will not apply to the enforcement of that security interest: sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 142, 143.
- 16.2 The Client consents to the Seller effecting a registration on the Personal Property Securities Register established pursuant to the PPSA ("PPSR") in relation to its security interest arising under or in connection with the Contract and the Client agrees to provide all assistance reasonably required by the Seller to facilitate this.
- 16.3 The Client agrees that if the Seller's interest under the Contract is a security interest for the purposes of the PPSA that the security interest relates to the Goods and all proceeds of the Goods and the Contract (including these Terms and Conditions) is a security agreement for the purposes of the PPSA.
- 16.4 The Client waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

#### 17. Exclusions, Limitations and Indemnities

- 17.1 Without affecting any rights under a warranty mentioned in clause 9, and subject to clause 10 the Client uses, operates and possesses the Goods at its own risk. The Client agrees with the Seller that the Seller will have no responsibility for liability for loss or damage to property.
- 17.2 To the extent permitted by law:
- use of the Goods and Services is at the Client's risk and the Seller's liability for any breach of any term of the Contract including terms implied by law or in connection with the provision of or failure to provide Goods or Services is excluded;
  - to the extent that the Seller's liability is or cannot be excluded, its liability to the Client in connection with the Contract or the provision of or failure to provide Goods or Services (including in relation to any information or representation made or given by the Seller in respect of Goods or Services) for any direct or indirect loss or damages including loss of profit, special or consequential losses is in all circumstances limited to the Price paid or payable by the Client for the Goods or Services;
  - the Client releases and discharges the Seller from all claims and demands on the Seller and any loss or damage of any kind whatsoever and whenever caused to the Client, its employees or agents, arising directly or indirectly from or incidental to a breakdown of or defect in, the Goods or Services or which may be suffered upon or near the Goods or Services performed.
- 17.2 The Client indemnifies the Seller against any and all injuries, claims, liabilities, losses and damages arising or alleged to be arising out of the delivery, selection, purchase, storage, operation or use of any Goods (except where used by the Seller or any person on behalf of the Seller).
- 17.3 Subject to clause 10, the Client agrees to the extent permitted by law that the Seller has not, and does not, give any condition, warranty or representation as to the condition or quality of the Goods and Services, their suitability or fitness for any purpose or its correspondence to any description or sample.

#### 18. General

- 18.1 If any provision in these Terms and Conditions shall become invalid or void, illegal or unenforceable, the validity and existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired in any respect whatever.
- 18.2 The Seller reserves the right to review these Terms and Conditions at any time, and to notify any changes to the Client in writing.
- 18.3 In the event of breach of the Contract by the Seller, the remedies of the Client shall be limited to damages, and under no circumstances shall the total liability of the Seller exceed the Price of the Goods and/or Services.
- 18.4 All Goods and/or Services supplied or provided by the Seller shall be subject to the respective laws of the States and Territories of Australia, ruling at the date of the agreement entered upon between the Seller and the Client. The Seller shall accept no responsibility for changes in these laws, affecting the Contract after this date.
- 18.5 The Seller may at any time assign, charge or otherwise deal with its right, title and interest pursuant to the Contract (including these Terms and Conditions). The Client must not assign or charge the Contract or any of its rights or obligations under the Contract without the prior written consent of the Seller.
- 18.6 The provisions in the Contract (including these Terms and Conditions) exclusively and completely state the rights of the Seller and the Client with respect to the Goods and Services and supersede all negotiations and prior agreements, whether written or oral.