

1. **Interpretation**

In these Terms:

 - 1.1 **"Aged Care Act"** means the *Aged Care Act 2024* (Cth) and its associated rules, quality standards, code of conduct and regulations (as applicable), which may be amended from time to time.
 - 1.2 **"Background Intellectual Property"** means all Intellectual Property Rights developed, owned or acquired by a party prior to the commencement of this Agreement.
 - 1.3 **"Eldercare"** means Eldercare Australia Ltd ACN 649 235 183, the buyer of the Services and / or Goods detailed in the Purchase Order;
 - 1.4 **"Goods"** means the goods to be supplied by the Supplier to Eldercare as detailed in the Purchase Order.
 - 1.5 **"Intellectual Property Rights"** means all registered or unregistered copyright, patents, trademarks, designs, circuit layouts, plant breeders rights, domain names, know-how, trade secrets, inventions, discoveries and any other industrial or intellectual property rights of the party.
 - 1.6 **"Modern Slavery Act"** means the *Modern Slavery Act 2018* (Cth) and any associated rules and regulations which may be amended from time to time.
 - 1.7 **"Reportable Incident"** means any incident or potential incident involving an Eldercare resident which the Supplier becomes aware of in connection with or in the course of delivering the Goods and/or rendering the Services in relation to:
 - 1.7.1 death of a resident;
 - 1.7.2 serious injury or illness;
 - 1.7.3 abuse or neglect (including physical, emotional or psychological abuse);
 - 1.7.4 assault or use of excessive force;
 - 1.7.5 sexual misconduct (including sexual assault or rape or sexual harassment);
 - 1.7.6 the use of an unauthorised restrictive practice;
 - 1.7.7 theft or financial coercion;
 - 1.7.8 intoxication or impairment of an Eldercare employee or contractor providing services to a resident;
 - 1.7.9 conduct that suggests an Eldercare employee or contractor has significantly departed from acceptable professional standards; or
 - 1.7.10 unexplained absence of a resident from an Eldercare operated facility.
 - 1.8 **"Price"** means the price for the Services and / or Goods as set out in the Purchase Order.
 - 1.9 **"Purchase Order"** means the documentation issued by Eldercare to the Supplier specifying the Services and / or Goods to be supplied by the Supplier.
 - 1.10 **"Services"** means the services to be supplied by the Supplier to Eldercare as detailed in the Purchase Order.
 - 1.11 **"Supplier"** means the Supplier of the Services and / or Goods to be supplied in accordance with the Purchase Order and includes the Supplier's officers, employees, contractors and agents.
 - 1.12 A reference to a statutory instrument, regulation, policy or procedure is a reference to that statutory instrument, regulation, policy or procedure as amended or otherwise in force from time to time.
2. **General**
 - 2.1 The Supplier agrees to supply the Services and / or Goods to Eldercare and Eldercare agrees to purchase the Services and / or Goods for the Price on these Terms.
 - 2.2 These Terms will apply to the supply of Services and / or Goods by the Supplier despite any conflicting terms proposed by the Supplier, unless waived in writing by Eldercare.
3. **Services**
 - 3.1 The Supplier will perform the Services set out in the Purchase Order.
 - 3.2 The Supplier warrants it has the expertise and is in the business of providing the types of Services required by the Purchase Order.
 - 3.3 The Supplier will perform the Services in accordance with any specifications or special conditions agreed between the parties as set out in the Purchase Order.
 - 3.4 The Supplier will perform the Services:
 - 3.4.1 with reasonable skill, care and diligence;
 - 3.4.2 in a proper and professional manner;
 - 3.4.3 so that the Services are fit for their intended purpose; and
 - 3.4.4 in accordance with any applicable laws and Eldercare policies and procedures.
 - 3.5 The Supplier will rely upon and use its own skill and judgment in the course of performing the Services.
 - 3.6 The Supplier will provide the Services at a time and in a manner agreed between the parties.
 - 3.7 In the event that the Supplier cannot provide the Services, the Supplier will notify Eldercare of such and:
 - 3.7.1 attempt to reschedule performance of the Services; or
 - 3.7.2 cancel performance of the Services and refund any sum paid by Eldercare in consideration for the Services provided.
4. **Goods**
 - 4.1 The Supplier will supply the Goods to Eldercare as set out in the Purchase Order and as accepted by Eldercare.
 - 4.2 The Supplier will deliver the Goods to the address and (subject to the provisions of these Terms) on the date set out in the Purchase Order ("**Delivery**").
 - 4.3 Delivery is at the Supplier's expense unless otherwise stated in the Purchase Order.
 - 4.4 Any Goods are at the risk of Eldercare from the time of Delivery.
- 4.5 Ownership of and title in the Goods shall not pass to Eldercare until the Supplier has received payment in full of all sums due to the Supplier in respect of the Goods.
- 4.6 If Eldercare has not paid any sums owing to the Supplier for delivered Goods but sells or otherwise disposes of the Goods or any part of them, the monies received in respect of the disposal of the Goods will be held on trust by Eldercare for the Supplier and will be payable immediately to the Supplier on demand.
5. **Delays in Delivery**
 - 5.1 If Eldercare does not receive the Goods in accordance with clause 4, the Supplier must promptly notify Eldercare in writing of the anticipated event and duration of the inability to supply the Goods.
 - 5.2 Notwithstanding any other provision of these terms, if the Supplier fails to deliver the Goods by the date specified in the Purchase Order, Eldercare may cancel the Purchase Order or any part thereof without prejudice to any other rights, remedies or powers available to Eldercare. Eldercare may return any part deliveries to the Supplier at the Suppliers cost as outlined in clause 7.1 below.
6. **Warranty**
 - 6.1 The Supplier warrants that all Services and / or Goods supplied to Eldercare are of acceptable quality, are fit for purpose and comply with all regulatory requirements, industry standards and laws.
 - 6.2 Where any Goods are not manufactured by the Supplier, the Supplier is to ensure that Eldercare is the beneficiary of any manufacturer's warranty (if any).
 - 6.3 Except for the relevant manufacturing warranty or as required by operation of the law, all conditions or warranties in respect of the Services and / or Goods, express or implied, statutory or otherwise, are excluded.
7. **Returned or rejected Goods**
 - 7.1 Subject to clause 7.2, Eldercare may return Goods within 10 business days of receipt of delivery of the Goods. All returned Goods must be returned to the Supplier at the Supplier's cost. This right does not displace or otherwise prejudice the rights of Eldercare at law.
 - 7.2 Where the Goods are perishable and defective or otherwise of unsatisfactory quality, Eldercare will notify the Supplier as soon as practicable and advise of its intention to return or otherwise dispose of the perishable Goods.
8. **Inspection and testing**
 - 8.1 Eldercare, or any agent appointed by us, have the right to carry out reasonable inspections and testing to ensure that the Services and / or Goods comply with these Terms. If requested by Eldercare, the Supplier must provide all reasonable assistance (including providing access to any premises, including any subcontractor's premises) as may be required by Eldercare to facilitate such inspections and testing.
9. **Payment**
 - 9.1 The Supplier will provide Eldercare with an invoice after providing the Services and / or Goods for the Price ("**Invoice**").
 - 9.2 All prices set out in the Invoice are inclusive of any goods and services tax ("**GST**") unless otherwise expressed.
 - 9.3 Unless otherwise agreed in writing, Eldercare will pay all Invoices within 30 days of the end of month in which the Invoice was issued.
10. **Supplier's personnel**
 - 10.1 The Supplier must, at its own cost, provide all personnel and resources which are necessary or required to perform the Services and / or Goods.
 - 10.2 The Supplier must ensure that the Supplier's personnel engaged in the supply of Services and / or Goods are competent and professional, with appropriate qualification and experience and perform their duties satisfactorily and with care, skill and diligence.
11. **Subcontracting**
 - 11.1 The Supplier must not subcontract the whole or any part of the obligations under these Terms without Eldercare's prior written approval, which Eldercare may grant or withhold in its sole discretion. The Supplier will remain principally liable for the performance of these Terms and the acts and omissions of any subcontractor.
12. **Insurance**
 - 12.1 Unless otherwise waived in writing, the Supplier must at all relevant times effect and maintain with a reputable insurer:
 - 12.1.1 Public liability insurance with a limit of AUD \$10 million for each and every claim;
 - 12.1.2 professional indemnity insurance with a limit of no less than AUD \$5 million for each and every claim;
 - 12.1.3 all other insurances required to be affected by the Supplier at law; and
 - 12.1.4 any insurance policies notified to the Supplier by Eldercare in writing.
 - 12.2 The Supplier will promptly provide Eldercare with copies of the certificates of currency evidencing the insurance held by the Supplier upon the request of Eldercare.
13. **Liability**
 - 13.1 To the maximum extent permitted by law, Eldercare indemnifies and keeps indemnified the Supplier against any and all claims suffered or incurred by the Supplier arising out of:
 - 13.1.1 any gross negligence, wilful misconduct or omission of Eldercare; or
 - 13.1.2 any breach by Eldercare of these Terms, except to the extent that the claim results from the negligence, fault, wilful misconduct or omission of the Supplier.

- 13.2 To the maximum extent permitted by law, the Supplier indemnifies and keeps indemnified Eldercare against any and all claims suffered or incurred by Eldercare arising out of:
- 13.2.1 any negligent act, wilful misconduct or omission of the Supplier;
- 13.2.2 any breach by the Supplier of these Terms or any applicable law, except to the extent that the claim results from the negligence, fault, wilful misconduct or omission of Eldercare.
- 13.3 Notwithstanding anything in clauses 13.1 and 13.2 of these Terms, under no circumstances whatsoever will either party be liable for any indirect or consequential loss or damage (including loss of profit or loss of opportunity) whatsoever.
- 13.4 These limitations and indemnities continue after the expiration or termination of these Terms.
- 13.5 Eldercare's liability to the Supplier under these Terms in connection with the supply of Services and / or Goods is capped at the sum of all monies paid by Eldercare to the Supplier in the 12 months preceding any claim.
14. **Set-off**
Eldercare may set-off any monies owed by the Supplier to Eldercare against any monies owed by Eldercare to the Supplier. This does not limit Eldercare's ability to recover any monies owed by the Supplier by any other means.
15. **Termination**
- 15.1 Eldercare may terminate these Terms (and any connected Purchase Order) by giving the Supplier no less than 2 business days' notice.
- 15.2 Where Eldercare elects to terminate these Terms in accordance with clause 15.1, the Supplier may claim any reasonable direct, unmitigated and provable costs incurred by the Supplier in anticipation of providing the Services and / or Goods.
- 15.3 Either party may terminate these Terms upon 30 days' notice in writing to the other party.
- 15.4 Either party may terminate these Terms immediately by written notice to the other if:
- 15.4.1 the defaulting party commits a material breach of these Terms and that breach is not rectified within 30 days of being notified; or
- 15.4.2 the defaulting party is presumed insolvent within the meaning of any applicable law, is made bankrupt, is placed into liquidation or any other form of administration relating to insolvent debtors or has a third party take possession of any substantial asset(s) of the defaulting party or if any proceedings are issued or an event occurs intended to lead to any of those consequences.
- 15.5 Where these Terms are terminated by the Supplier or as the consequence of an unremedied breach of these Terms by the Supplier, the Supplier is liable to Eldercare for any costs incurred in connection with the acquisition of replacement Services and / or Goods.
16. **Certificate of Services completed**
Following a request from Eldercare in writing, the Supplier will provide a certificate setting out the Services provided to Eldercare ("**Certificate of Services**").
17. **Reasonable Directions**
The Supplier (and their employees, agents and subcontractors) will comply with all reasonable directions of Eldercare in the performance of the Services and / or delivery of the Goods associated with health, safety, security or law.
18. **Confidentiality**
Except where disclosure is required by law or must be made to a legal adviser, both the Supplier and Eldercare will keep confidential these Terms and any other information that is designated by the Supplier as confidential or any information that Eldercare knows or ought to reasonably know is confidential.
19. **GST**
If GST is imposed on any supply made under or in accordance with these Terms, Eldercare must pay the Supplier, an amount equal to the GST payable on or for the taxable supply, subject to Eldercare receiving (if required by law) a valid tax invoice in respect of the supply. Payment of this amount must be made at the same time as payment for the taxable supply is required to be made in accordance with these Terms.
20. **Modern Slavery**
- 20.1 The Supplier shall ensure that it and its subcontractors (and to the extent practicable, its other suppliers and business partners) comply with:
- 20.1.1 the Modern Slavery Act; and
- 20.1.2 all of Eldercare's policies and procedures related to the Modern Slavery Act.
- 20.2 The Supplier will:
- 20.2.1 immediately notify Eldercare if it becomes aware of any actual or suspected modern slavery in its supply chains;
- 20.2.2 implement due diligence procedures for its own suppliers, contractors, agents and sub-contractors to ensure that it has adequate procedures in place to prevent and address its involvement in modern slavery; and
- 20.2.3 respond to Eldercare's enquiries and cooperate with any audits or investigations into its organisation or its supply chains.
- 20.3 If the Supplier commits a material breach of this clause Eldercare may require that the Supplier take steps to rectify the conduct that has caused the breach or may immediately terminate these Terms.
21. **Aged Care Act**
If the Goods or Services relate to the provision of funded aged care services in accordance with the Aged Care Act, the Supplier must:
- 21.1 provide Eldercare with such information and reports regarding the Supplier's interaction with care recipients as Eldercare reasonably requires;
- 21.2 obtain, at their own cost, any certificates, clearances or approvals required by that law; and
- 21.3 perform the Services or deliver the Goods in accordance with any aged care charters, standards, policies and procedures that Eldercare has in place.
22. **Reportable Incidents**
- 22.1 The Supplier will immediately notify a member of the Eldercare executive team if the Supplier is aware of or suspects a Reportable Incident has occurred.
- 22.2 Upon the occurrence or suspected occurrence of a Reportable Incident, the Supplier must document all information known to the Supplier in relation to the Reportable Incident.
- 22.3 The Supplier agrees to participate and co-operate in any investigation process conducted by Eldercare arising from in relation to a Reportable Incident including by sharing information with Eldercare and ensuring its employees, contractors, officers and agents who witnessed the Reportable Incident are available to speak with Eldercare.
23. **Work Health and Safety**
- 23.1 Eldercare will take all reasonable steps to ensure that any premises the employees, contractors or agents of the Supplier attend are safe, free from any hazards, sufficiently lit and accessible, and comply with all relevant work health and safety laws relevant to that premises.
- 23.2 The Supplier will ensure that all employees, contractors and agents of the Supplier comply with all work health and safety policies and procedures developed and implemented by Eldercare relevant to the delivery of the Services and / or Goods.
- 23.3 If the Supplier is required to enter a site operated by Eldercare in the course of providing the Goods and/or Services, the Supplier:
- 23.3.1 and any employees, contractors or agents thereof, enter the site at their own risk;
- 23.3.2 must comply with all policies and procedures notified to the Supplier by Eldercare with respect to work health and safety requirements while on the site (including those required by law);
- 23.3.3 comply with any reasonable directions of Eldercare connected with the health, safety and security of the site and Eldercare's operations;
- 23.3.4 any employees, contractors or agents must be registered with Eldercare's Contractor Management system prior to entry and will display a current identification card which they will display and use while on an Eldercare site; and
- 23.3.5 (if required) must obtain any relevant clearances required by law.
24. **Privacy**
- 24.1 The collection, use, disclosure and storage of personal information is governed by Eldercare's Privacy Policy and the *Privacy Act 1988* (Cth).
- 24.2 The Supplier acknowledges that unless otherwise authorised in writing, they are not permitted to access personal information held by Eldercare and will notify Eldercare as soon as practicable if an employee, contractor or agent of the Supplier deals or handles personal information held by Eldercare in the course of providing the Services and / or delivering the Goods.
25. **Intellectual Property**
- 25.1 Each party acknowledges that each party is, at the date of this Agreement and at all later times, the owner of its Background Intellectual Property.
- 25.2 The Contractor agrees that Eldercare will own all right, title and interest in all materials and all Intellectual Property Rights made, written, created or developed by the Contractor directly in the course of and for the purpose of providing the Services to Eldercare ("**Services IP**"). The Contractor assigns to Eldercare any and all of the Consultant's right, title and interest in the Services IP. This assignment takes effect as each part of such Services IP and Intellectual Property Rights comes into existence.
- 25.3 If necessary to enable Eldercare to enjoy the benefit or end result of the Services, the Contractor grants to Eldercare a perpetual, non-exclusive, irrevocable, royalty-free licence, with a right to grant sub-licences, to use, solely for that purpose, such of the Contractor's Background Intellectual Property as is strictly necessary to enjoy that benefit or end result.
- 25.4 The Contractor represents and warrants to Eldercare that the Services IP will not infringe the Intellectual Property Rights of any person. The Contractor fully indemnifies Eldercare against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against Eldercare alleging that the Services IP infringes any such Intellectual Property Rights.
26. **Eldercare Policies and Procedures**
The Supplier acknowledges and agrees to comply with Eldercare's policies and procedures.
27. **Diversity and Inclusion**
- 27.1 Eldercare welcomes diversity. Regardless of culture, religion, spirituality, age, gender, sexuality, disability, socio-economic background or personal experiences, Eldercare's people are included and respected.
- 27.2 Eldercare is committed to ensuring that lesbian, gay, bisexual, transgender and intersex (LGBTI) residents, their friends and families, staff and volunteers are valued and treated equitably.
- 27.3 Eldercare encourages respectful relationships and does not accept any form of gender-based violence in the workplace. Eldercare is committed to preventing violence against women and is proud to be a White Ribbon Accredited Workplace to support victims of abuse.
- 27.4 The Supplier and their employees, contractors and agents agree to:
- 27.4.1 act in accordance with Eldercare's policy of zero tolerance in regard to discrimination and/or violence against women, gender based or any other violence, including but not limited to physical, financial, verbal and emotional actions;
- 27.4.2 not partake in any forms of discrimination and/or violence, and recognise it is illegal to do so;
- 27.4.3 follow all Eldercare policies for responding to incidents where discrimination and violence occurs on Eldercare premises; and
- 27.4.4 take all necessary actions to report and act on incidents if this occurs on Eldercare premises.
28. **Governing law**
These Terms are to be governed and interpreted in accordance with the laws of the State of South Australia. The parties agree to submit themselves to the non-exclusive jurisdiction of the courts of South Australia and any competent appellate courts.

29. **Notices**

Any notice to be given by one party to the other must be signed by the party giving the notice or by one of its duly authorised officers. The notice may be faxed to the intended recipient's facsimile number or e-mailed to the intended recipient's e-mail address. The notice will be deemed to have been received by the intended recipient upon receipt by the sender of a successful facsimile transmission answerback or in the case of e-mail, on the day of transmission provided that the sender is able to give evidence of transmission and the intended recipient does not give evidence of non-receipt.

30. **Force Majeure**

No party is liable for any failure to perform its obligations under these Terms if the failure or delay is due to anything beyond that party's reasonable control. If that failure exceeds 60 days, the other party may terminate these Terms with immediate effect by giving notice to the other party. This clause does not apply to any obligation to pay any sum owing to the Supplier by Eldercare in accordance with these Terms.

31. **Variation**

31.1 The Parties may add or vary these Terms in writing as agreed between the parties.

31.2 In regard to recurring Services, the Supplier reserves the right, subject to providing Eldercare no less than 14 days' written notice, of any increase to the price of the Services and / or Goods. Eldercare may terminate a reoccurring Services and / or Goods in writing if they do not accept the price increase.

32. **Assignment**

The parties may only assign their interests under these Terms with the prior written consent of the other party, which must not be unreasonably withheld.

33. **Severability**

Every provision of these Terms will be deemed severable as far as possible from the other provisions of these Terms. If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed and omitted from these Terms. These Terms with the offending provision severed and omitted and with any consequential amendment necessary will otherwise remain in full force.

34. **Inconsistency**

To the extent of any inconsistency between these Terms and any terms of the Supplier, these Terms shall prevail.