

1. Agreement

- (a) The Purchase Order ('PO') is governed by these Terms and Conditions ('Ts&Cs'). These Ts&Cs constitute a legally binding agreement ('Agreement') between ComfortDelGro Corporation Australia Pty Ltd and its Related Bodies Corporate (together 'the **Company**') and the Supplier ('Supplier') specified in the PO (collectively, 'the **Parties**') for the goods to be delivered or services to be performed by the Supplier (together, 'the **Deliverables**').
- (b) This Agreement is constituted exclusively of these Ts&Cs and any other document is expressly excluded unless specifically incorporated by reference in the PO. Any terms and conditions of the Supplier are expressly excluded. In case of inconsistency, these Ts&Cs shall be foremost in order of precedence and shall apply to the exclusion of anything to the contrary.

2. Term

- (a) The Agreement shall commence and end as per the dates specified in the PO and shall be for the duration specified in the PO ('Term') unless extended in accordance with clause 2(c) or terminated earlier in accordance with clause 13(a).
- (b) If no expiry date is specified in the PO, the Agreement will come to an end when all the Deliverables are delivered or performed, and all payments made by the Company.
- (c) The Company, may, at its discretion, extend the Term by providing the Supplier with at least 10 business days' notice prior to the expiry of the Term, such notice to describe the duration of the extended term and other variations to the PO.
- (d) If the Supplier continues to supply and the Company continues to receive the Deliverables after the expiry of the Term or any extended term, the Supplier must continue to provide the Deliverables on a month-to-month basis which is terminable by either party by giving the other 30 days' prior written notice and the Company must continue to pay the Supplier in accordance with this Agreement.

3. Supplier's Warranties

- (a) The Supplier warrants that:
 - (i) the goods will be of merchantable quality, free from defects and fit for purpose; comply with the Company's specifications and all applicable laws; be unused and free from any encumbrance or security interests; and
 - (ii) the services will comply with the Company's specifications and all applicable laws and must be of the highest industry standards.
- (b) The Supplier further warrants that: it has the right to enter into the PO; it has the right to sell, and transfer title to and property in, the goods to the Company; the Company's possession or use of the Deliverables will not infringe upon or violate any Intellectual Property ('IP'); there is no conflict of interest under this PO; and it will exercise the highest degree of skill and diligence in executing the PO.
- (c) The warranties in this clause are deemed to be repeated on each occasion the Deliverables are delivered or performed.

4. Delivery, Title, and Risk

Unless otherwise specified in the PO, delivery shall be Delivered Duty Paid (DDP) INCOTERMS. Risk in the goods will pass to the Company when the goods are delivered to the delivery point specified in the PO. Title in the goods will pass to the Company upon the Company's acceptance of the goods.

5. Price, Invoice and Payment

- (a) The price shall be as specified in the PO ('Price'). The Parties agree that the Price is fixed for the Term of the Agreement and inclusive of all taxes (excluding GST). Unless otherwise specified in the PO, the Price includes all costs and expenses of the Deliverables.
- (b) On or following acceptance of the Deliverables, or as otherwise specified in the PO, the Supplier must submit a tax invoice to the Company, containing all information for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999* together with such other information as the Company may reasonably require for payment. Unless otherwise specified in the PO, payment terms are 30 days from the date of receipt of a valid and accurate invoice.
- (c) If the Company disputes the invoiced amount, it will pay the undisputed amount and notify the Supplier of the amount in dispute and the reasons thereof. If the parties are unable to resolve the dispute in good faith, the dispute shall be determined in accordance with the Dispute Resolution procedure under clause 15.
- (d) Payment of an invoice is not to be taken as evidence that the Deliverables confirm with the PO but is only 'payment on account'. Further, the Company reserves the right to set off any amount owing by the Supplier to the Company.

6. Defective Deliverables

- (a) The Company may reject defective goods by giving written notice to the Supplier within 30 days of delivery, whereupon the Supplier must at its own cost, replace, repair, remove or otherwise dispose of the defective goods at the Company's option. Defective services must be reperfomed in accordance with the Company's instructions.
- (b) If the Supplier fails to comply with the above clause, the Company may, at its discretion, return the goods to the Supplier at the Supplier's cost and expense or dispose them. Likewise, if defective services are not rectified or reperfomed, the Company may get them reperfomed or rectified from another service provider at the Supplier's cost and expense.

7. Intellectual Property Rights

The Supplier irrevocably and unconditionally grants to the Company a non-exclusive, perpetual, royalty-free, worldwide and transferable licence (including the right to sub-license) to use the IP in the Deliverables to the extent necessary to allow the Company the full use and enjoyment of the Deliverables. The Supplier must, upon request by the Company, do all things necessary to give full effect to such rights.

8. Liability and Indemnity

- (a) The Supplier indemnifies, and will always keep the Company and its personnel indemnified, against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way connected with, any of the following:
 - (i) personal injury, including sickness or death; property damage;
 - (ii) breach of an obligation of confidence or privacy, whether under this PO or otherwise;
 - (iii) fraudulent acts or omissions; wilful misconduct or unlawful act or omission;
 - (iv) third-party claim arising out of a breach of the PO by the Supplier or its personnel or any negligent act or omission of the Supplier or its personnel; and
 - (v) infringement or alleged infringement of IP or any other rights of any person, including any third party.
- (b) The Company's entire liability for any cause of action, whether under this Agreement, warranty or in tort (including negligence) for all claims is limited to an amount equal to the total Price under the PO or the actual amount paid by the Company to the Supplier, whichever is lower, except for personal injury, or death caused by the Company's negligence.
- (c) To the extent permitted by law, neither party shall be liable to the other for any lost profits, lost revenue or any indirect, special, consequential, or incidental damages.

9. Insurance

- (a) The Supplier must (and must ensure that its subcontractors) obtain and maintain for the Term and any extended term and, if requested by the Company, for a period of up to 7 years after the supply or performance of the Deliverables, insurances, including but not limited to product liability insurance, public liability insurance, vehicle and equipment insurance, workers' compensation insurance and other insurances as reasonably requested by the Company from time to time.
- (b) The Supplier must, within 10 days of a request by the Company, provide certificates of currency of any insurance it is required to maintain.

10. Confidentiality, Privacy and Data Protection

- (a) The Supplier must keep all information confidential and secure and not disclose or otherwise make available any confidential information to any person, except as legally permitted and subject to Company's prior consent. The Supplier must comply with the *Privacy Act 1988* (Cth) or the relevant Acts of each State and to the extent possible assist the Company to comply with its obligations under privacy laws.
- (b) The Supplier must only use data, including any 'personal information' to the extent necessary to perform its obligations under the Agreement. The Supplier must take reasonable and prudent steps consistent with industry best practices to ensure that the Company's data is protected from loss, damage, corruption, misuse, and unauthorised access.

11. Force Majeure

- (a) Where the Supplier is prevented from or delayed in performing its obligations under the Agreement by a force majeure event, the Supplier must immediately give the Company written notice whereupon the Company may, at its discretion, grant an extension of time.
- (b) If the Supplier is unable or prevented by the force majeure event to perform its obligations for a period of 10 days or longer, the Company may immediately terminate the Agreement by giving written notice to the Supplier, in which event, neither party shall be liable to the other in damages or compensation by reason of such termination, save that the Company shall pay the Supplier for the Deliverables accepted by the Company and delivered by the Supplier before the termination.

12. Supplier Code of Conduct ("SCOC")

- (a) The Supplier acknowledges and agrees that it has read and understood the Supplier Code of Conduct ('SCOC') and will comply with the same. The expectations set out in the SCOC are not intended to reduce, alter or supersede any other obligations, whether under the Agreement or at law. The Supplier must comply with all applicable laws in performing its obligations under the Agreement.

13. Termination

- (a) The Company may terminate the PO with immediate effect (or with effect from a specified date) by written notice to the Supplier, if the Supplier:
 - (i) fails to provide the Deliverables in accordance with the PO;
 - (ii) breaches the Agreement and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within a reasonable period notified by the Company;
 - (iii) fraud, dishonesty or any other serious misconduct;
 - (iv) ceases business or indicates that it is unwilling or unable to complete the Agreement;
 - (v) is or becomes insolvent; or
 - (vi) breaches the Code.
- (b) The Company may terminate the PO without cause and at any time during the Term by giving the Supplier 30 days' prior written notice.
- (c) Upon termination under clause 13(b) the Company will pay the Supplier for the Deliverables accepted up to the termination date and the Company shall have no other liability to the Supplier. When the Company issues a notice under the above clause, the Supplier must immediately comply with the Company's directions and do all that is possible to mitigate its losses arising from the termination.
- (d) On termination or expiry, the Supplier must immediately, following instructions by the Company, cease using all materials containing any data or confidential information by either destroying the materials or returning the materials at no cost or expense to the Company.

14. Assignment and Sub-contracting

- (a) The Supplier must not subcontract, assign, transfer or otherwise deal with its rights or obligations under the Agreement to any third person without obtaining the Company's prior written consent (which may be given conditionally or withheld).
- (b) The Supplier will not, in any event, be relieved from its obligation under the Agreement and shall be liable for all acts and omissions of its subcontractors, assignees or transferees.

15. Dispute Resolution

- (a) Differences or disagreements under the Agreement ('Disputes') must, in the first instance, be resolved amicably and thereafter through good faith between the senior representatives of the parties.
- (b) If the Dispute remains unresolved, either party may give written notice to the other party ('Dispute Notice') requesting that the Dispute be referred to mediation by the Australian Disputes Centre ('ADC'). The mediation shall be conducted in accordance with ADC's Mediation Guidelines & Rules with each party bearing its own cost.
- (c) If the parties fail to settle the Dispute at mediation, they may submit the dispute for resolution to final and binding arbitration to such institute and in such form as may be agreed between the Parties at the relevant time.
- (d) Pending the resolution of a Dispute, the Supplier must continue to supply the goods or perform the services under the Agreement and ensure continuity of performance.

16. Survival

Clauses 1, 3, 5, 6, 7, 8, 9(a), 10, 11(b), 12, 13(c), 13(d), 14(b) 15, 16 and 17 of this Agreement survive the termination or expiry of this Agreement.

17. General

- (a) The PO is governed by and is to be construed in accordance with the laws of Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) Time is of the essence in relation to the supply or performance of Deliverables.
- (c) No modification, variation or amendment of this Agreement shall be of any force or effect unless such modification, variation or amendment is in writing and has been signed by the authorised representatives of the parties.
- (d) A waiver of any right, power or remedy under the PO must be in writing and signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under the PO does not amount to a waiver.
- (e) Any provision of the PO which is invalid or unenforceable is to be read down, if possible, to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.