

## VITACO STANDARD PURCHASE ORDER TERMS (AU) January 2022

### 1. Defined terms

**Agreement** means these Terms, the Special Terms together with each Order (if any) sent to you.

**Business Day** means any day not being a Saturday or Sunday or a public holiday.

**Goods** means the goods (and any other deliverables as a result of the Services) to be provided by you, including as set out in an Order.

**Insolvency Event** means circumstances in which a Party is unable to pay its debts as they fall due or otherwise takes any corporate action or any steps are taken or legal proceedings are started for: (a) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by that Party; (b) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or (c) seeks protection or is granted protection from its creditors, under any applicable laws.

**Modern Slavery** means modern slavery, human trafficking, servitude, forced labour, bonded labour, child labour, slavery or forced marriage or deceptive recruiting for labour or services.

**Order** means a purchase order which we send to you describing matters such as the purchase order number, Goods, Services, price, requested delivery date and payment terms.

**Party** means either Vitaco or the Supplier as applicable; together they are the Parties.

**Personal Information** has the same meaning as defined in the Privacy Act 1988.

**Services** means the services to be performed by you, including as set out in an Order.

**Special Terms** means any additional terms as set out in an Order.

**Supplier, you or your** means you, the supplier of the Goods and/or Services to Vitaco.

**Terms** means these standard purchase order terms.

**Vitaco, we, us or our** means Vitaco Health (NZ) Limited and its related companies.

### 2. What do these Terms apply to?

These Terms (together with the Special Terms and the Order) constitute the entire agreement between the Supplier and Vitaco with respect to the supply of the Goods and performance of the Services. All other terms and conditions (including terms and conditions provided or referenced by the Supplier, whether or not received or acknowledged by Vitaco) will be void and unenforceable and will not in any way affect the application or operation of these Terms. These Terms

apply to any Order we place with you unless otherwise agreed in writing. To the extent that there are any inconsistencies between these Terms and an Order, the Order will take precedence. These Terms will not apply where we have in place a written supply agreement relating to the supply of the relevant Goods and/or Services.

We may change these Terms in our sole discretion, and any such changes will apply to Orders made after the date of the change, or if there is no Order, then with immediate effect.

Any updates to these Terms will be posted online at [vitacohealth.com](http://vitacohealth.com).

Nothing in these Terms obliges us to place an Order with you or restrict our ability to acquire Goods or Services from any other supplier.

### 3. How long do these Terms last?

These Terms apply during the period of time specified in any Order, or otherwise during the period of time when you supply Goods and/or Services to Vitaco or until we provide you notice that this Agreement is terminated.

### 4. When should Orders be confirmed and delivered?

(a) Within 48 hours of receipt of an Order, you must confirm and accept the Order along with the confirmed delivery date/s.

(b) For the supply of Goods, if you are unable to meet the requested delivery date/s, please confirm your best expected delivery date and keep us updated if any further delays are expected.

(c) You must deliver the Goods to the delivery address specified in the Order. Please note the correct delivery address. **We have multiple delivery sites. Deliveries arriving at the incorrect site will be rejected.**

(d) Neither our receipt of a delivery nor any signature given at the time should be taken to mean that the Goods or Services are satisfactory.

### 5. How should Goods be packaged?

All Goods supplied shall be packed as specified in the Order, and if not specified, shall be packed so as to avoid damage or deterioration to the Goods during transportation, loading and unloading.

### 6. We can inspect and test Goods

We may inspect and observe tests on the Goods at your premises and/or any subcontractor's premises. You must allow us access during business hours and on reasonable prior notice for this purpose. You must make this a condition of any subcontract.

### 7. When do we own the Goods?

Subject to our right to reject or return any Goods:

(a) If you have organised the freight of Goods to us,

risk passes to us when the Goods are delivered to our premises. Delivery is deemed to have been made immediately after the Goods are unloaded and signed for by an authorised representative.

(b) If we have organised the freight of the goods to us, risk passes to us and delivery is deemed to have been made, on signed collection of the goods by us or our subcontractor.

(c) Title to all Goods will pass to us when those Goods have been paid for in full.

(d) You may not take possession of any Goods which have been ordered and delivered to us without our prior written agreement.

(e) You warrant that you have unencumbered ownership of, and title to, the Goods and any goods comprised in the Services, and the Goods and any goods comprised in the Services are free of any liens, charges and encumbrances.

### 8. When we will accept the Goods and/or Services

Following delivery of the Goods or completion of the Services, we may inspect the Goods and/or Services and will notify you of any unsatisfactory or defective Goods or Services. We may return any non-complying Goods to you at your expense or require that you collect them or require that you reperform the Services.

### 9. What is the Price and Payment Terms for the Goods and/or Services?

(a) The price for the Goods and/or Services will be the price specified on the Order and cannot be varied unless agreed with us in writing. We require at least 60 days' written notice of any proposed price increase and supporting information for such proposed price increase. Unless otherwise agreed in writing, the price will be in Australian dollars and includes: (a) all delivery and packaging costs; and (b) GST and any other applicable taxes. No other fees or charges will be payable unless agreed in writing by us prior to such expenses being incurred.

(b) You must email an invoice to us for each individual Order to [accounts.payable@vitaco.co.nz](mailto:accounts.payable@vitaco.co.nz). Invoices must not be issued prior to delivery of the Goods and/or completion of the Services. Invoices must show the Order number.

(c) Unless we reasonably dispute an invoice, we will pay you on or before the 60th day following the end of month of invoice date.

(d) We may withhold payment of an invoice if we dispute the amount of the invoice, or for any Goods and/or Services which do not comply

with your obligations under this Agreement or if the Goods and/or Services are otherwise defective. We will pay any undisputed amounts, but you must not cancel or withdraw the supply of Goods and/or Services where an amount is disputed.

**10. Warranties** You will supply the Goods to us: (a) to the standards and specifications as set out in the Order

(b) in accordance with industry specifications and best practice; and

(c) at the delivery address and at the delivery date as set out in the Order.

All Goods must be:

(d) fit for the purposes for which they are intended to be used;

(e) of merchantable quality and free from defects in design, material or construction;

(f) new and unused;

(g) packaged appropriately to protect the Goods;

(h) comply with all applicable New Zealand Standards or where there is no applicable New Zealand Standard then all applicable Australian Standards;

(i) if you install the Goods, properly installed and integrated into our systems and property, and will be compatible with and not damage them;

All Services must be:

(a) performed promptly with due diligence, care, and skill by appropriately trained, qualified, experienced, and supervised persons;

(b) in accordance with industry specifications and best practice; and

(c) in accordance with the timing / project schedule set out in the Order.

You must also maintain all necessary consents, licences, and authorities to provide the Goods and/or Services.

### 11. What Remedies we have for defects

Without prejudice to any other remedy available to us if: (a) you do not deliver the Goods and/or Services by the delivery date (in accordance with clause 4); or (b) we discover that the Goods and/or Services do not meet the standards and requirements set out in these Terms or the relevant Order; whether after delivery of or payment for the Goods and/or Services and notwithstanding our acceptance of the Goods and/or Services, then, we will have the right to any one or more of the following remedies: (i) terminate these Terms or the Order immediately by giving you notice in writing; (ii) reject the Goods or Services (in whole or in part) and, return the Goods to the you at your own risk and expense; (iii) require the refund of any payment made in relation to undelivered, rejected

and/or returned Goods and/or Services; (iv) require you to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods; (v) require you to re-perform the rejected Services, or provide a full refund of the price of the rejected Services; (vi) require you to pay for the cost of the repair or replacement of the Goods; (vii) refuse to accept any subsequent delivery of the Goods and/or Services, which you attempt to make or do; and (viii) recover from you any costs we incur in obtaining substitute Goods and/or Services from a third party.

#### **12. Access, security, health and safety and conduct**

The Supplier must comply with all our safety requirements relating to the Supplier's conduct at the place of delivery and otherwise comply with all laws and regulations relating to health, safety and the environment.

#### **13. Confidentiality**

Each Party shall keep confidential the other Party's confidential information, except:

- (a) Where disclosures is required pursuant to applicable law;
- (b) where the information becomes part of the public domain through no fault of the Party receiving the information;
- (c) for disclosure to a Party's professional advisers or personnel.

#### **14. Drawings, tools and specifications**

All tools, patterns, materials, drawings, specifications and other data provided by Vitaco in connection with the Order:

- (a) remain our property (except that you are responsible for making good any damage done to them while they are in your possession
- (b) must be used solely for the purpose of the Order;
- (c) must not be passed to or divulged to any third party except with our written consent; and
- (d) must be returned to us on completion of the Order.

#### **15. Intellectual property**

Ownership of intellectual property existing prior to this Agreement is not affected by this Agreement. Ownership of all intellectual property you create or discover in performing this Agreement will vest in Vitaco on creation. For all intellectual property provided to us that we don't own, you grant us a non-exclusive, worldwide, royalty free, perpetual, irrevocable and sub-licensable licence to use, copy, distribute, sub-licence, reproduce, modify, adapt, publish, transmit, translate, create derivative works from, display and perform, whether publicly or otherwise, that intellectual property.

You warrant that you have all Intellectual Property Rights necessary to supply the Goods and perform the Services in accordance with this Agreement and indemnify us against any loss we suffer or incur by as a consequence of any claim by a third party that it has a right to any property or Intellectual Property Right in the Goods or the Services.

#### **16. Indemnity and Limitation of Liability**

You indemnify us against any action, liability, costs, damages or expenses suffered or incurred by us as a consequence of your action or omission or that of your, employees or agents, including supply of defective Goods or defective Services.

Neither Party will be liable to the other Party for any loss or damage including loss of profits or other economic loss, indirect, special, consequential, general or other similar damages, arising out of any breach of this Agreement or obligations under this Agreement.

#### **17. Recalls**

You must notify us immediately on becoming aware of any problem encountered in the manufacture, packaging, storage or transport of the Goods that may have an adverse impact on the quality and/or safety of the Goods.

If for any reason you recall any Goods (whether because the Goods are dangerous, defective, in breach of any law or for any other reason), then you must pay us for all our direct costs associated with recalling any finished products made from the Goods, including freight and insurance; distribution costs including staff time; advertising and public notification costs; and the cost of destroying the recalled finished products (if we decide).

#### **18. Force Majeure**

Neither Party will be liable for failure to fulfil its obligations due to an event beyond its reasonable control, (not including strikes nor any form of labour dispute) provided that the Party affected by such occurrence notifies the other Party in writing within five Business Days of the commencement of that occurrence. When the Party ceases to be affected by the force majeure event it must immediately recommence performing its obligations under the Order and notify the other Party accordingly. However, if as a result of any such force majeure event, supply of all or part of the Goods is delayed more than thirty (30) days after the delivery date specified in the Order we may, without penalty and compensation to you, cancel the Order.

#### **19. How can this Agreement be terminated?**

Either Party may terminate these Terms or any Order immediately after giving the other Party notice in

writing if the other Party is in material breach of any of these Terms or undergoes an Insolvency Event. We may also terminate these Terms without cause, upon 20 Business Days' written notice.

#### **20. Subcontracting**

You must not enter into a contract with someone else to deliver any part of the Agreement without our prior written approval. Any subcontracting will not relieve you of your obligations under this Agreement.

#### **21. Protecting Personal Information**

You agree:

- (a) to use or disclose Personal Information obtained only for the purposes of delivering Goods/Services and complying with this Agreement, including the reporting An requirements;
- (b) not to do anything that would breach an information privacy principle contained in the Privacy Act, which if done or engaged in by an agency under the Privacy Act, would be a breach of that information privacy principle;
- (c) to otherwise comply with the Privacy Act and any code established under the Privacy Act;
- (d) to immediately notify us if you become aware of any breach or possible breach of the Privacy Act whether by you or your subcontractors;
- (e) to ensure that any of your personnel who deal with Personal Information for the purposes of this Agreement are made aware of and comply with the obligations set out in this clause 20; and
- (f) This clause 21 survives the expiration or earlier termination of this Agreement.

#### **22. How can disputes be resolved?**

Both Parties agree to come together to negotiate in good faith to discuss and quickly resolve issues, for a period of no more than 10 Business Days prior to seeking any legal remedy. If we cannot resolve a dispute by negotiation, either of us may refer the matter to mediation, and shall notify the other Party in writing. We will each meet our own costs of resolving the dispute. Notwithstanding the existence of a dispute, the Parties shall continue to perform this Agreement. Nothing under this clause 22 prevents either party seeking urgent injunctive relief.

#### **23. Insurance**

In relation to Services, you shall take out and maintain:

- (a) comprehensive public liability insurance with a limit of not less than \$10,000,000 per claim;
- (b) insurance covering your own property, equipment, materials owned, hired leased or used by you for the purpose of this Agreement;

and

- (c) any additional insurance required by any applicable law.

In relation to Goods, you shall take out and maintain:

- (a) product liability insurance cover for personal injury and property damage caused by the Goods and/or Services in an amount not less than \$10,000,000 (or such other amount agreed in writing by us) for any one claim;

each with a reputable insurer. On request, you must provide us with a certificate of currency showing your insurance under this clause 23.

#### **24. Anti-Bribery**

You shall comply with all applicable laws, rules and regulations relating to anti-bribery laws.

#### **25. Modern Slavery**

In this clause 25, 'Secondary Subcontractor' means any of your consultants, contractors, suppliers, service providers and any other person engaged by or on your behalf in connection with this Agreement.

- (a) You must take (and must take all reasonable endeavours to ensure that each of your Secondary Subcontractors take) all reasonable steps to ensure that no Modern Slavery is present in your or your Secondary Subcontractors', supply chains, or in any part of their businesses.
- (b) You warrant that neither you nor any of your officers, employees have been convicted of, or has been or is, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any form of Modern Slavery.
- (c) You must promptly notify us as soon as you become aware of any actual or suspected Modern Slavery in your or your Secondary Subcontractors' supply chain which is connected to this Agreement.

#### **26. General**

No waiver under this Agreement is effective unless in writing. If any provision or part of any provision, of the Order is invalid or otherwise unenforceable that provision or that part of the provision will be severed from the Order and the remainder of the Order will continue to be effective and valid notwithstanding such severance. This Agreement is governed by the laws of the state of New South Wales and the parties submit to the exclusive jurisdiction of the courts of the state of New South Wales.