



rehabilitation, hospital & home care equipment

Network Supplier DVA - Terms and Conditions

In accepting a HenryCare Work order for a DVA Veteran you are agreeing to the following terms and conditions.

1: Offers are made on a job by job basis

- (1.1) These [Terms & Conditions](#) form a *standing offer* under which specific contracts for services (or supplies) may be accepted by [HenryCare](#), through the following process.
- (1.2) A “HenryCare official” will provide the [Supplier](#) with a task requirement when there is a need for the [Services](#). The task requirement will be in the form of a written HenryCare Work order. Each order issued to the [Supplier](#) shall constitute a discrete contract between the parties for the [Services](#). Each discrete contract shall be subject to and incorporate the terms these [Standard Terms & Conditions](#).
- (1.3) [HenryCare](#) shall not be liable for any work which has not been requested in writing through the issue of a written HenryCare Work Order.
- (1.4) [HenryCare](#) does not bind itself to any exclusive arrangement, to order any specific quantities of the [Services](#) or to engage any quantity at all, but reserves the right to engage such quantity of the [Services](#) as may be required according to the requirements of [DVA](#).
- (1.5) [HenryCare](#) may, at its absolute discretion, obtain [Services](#) similar to those offered by the [Supplier](#) from third parties, and nothing in these Terms and conditions shall give rise to any right of the [Supplier](#) to exclusively provide.

2: Intellectual property rights (IPRs)

- (2.1) **[Intellectual Property]** The systems and processes by which HenryCare performs its requirements under the Department of Veterans Affairs (DVA) minor modifications contract including but not limited to, receiving work from prescribers, allocating work to suppliers, undertaking work, providing information on the progress of jobs, reporting to and invoicing the DVA and communications methodologies are the exclusive Intellectual property of HenryCare and ownership remains vested with HenryCare at all times.
- (2.2) **[HenryCare Materials]** All forms used are copyright. These systems processes and forms are called “HenryCare Material”. New or additional systems, process and forms coming in to existence are also HenryCare material.
- (2.3) **[Licence granted]** HenryCare grants the supplier a licence to use HenryCare material and Intellectual property only in the performance of work offered under each specific contract.

3: Quality, best practice, safety, product and service guarantees and security standards

- (3.1) **[Quality]** The Supplier agrees that standards of workmanship are to conform with the requirements of these Terms & Conditions, the Building Code of Australia, relevant Australian Standards and all lawful requirements of Commonwealth, State, Territory and local legislation and subordinate regulations, ordinances, by-laws, orders and proclamations including state based electrical safety standards.
- (3.2) **[Best Practice]** The Supplier agrees to perform the Services in accordance with the standards set out in the HenryCare Requirements as published on www.henry.com.au. or at the standard recognised as best practice in the industry where such a standard is superior to that listed in the Requirements.
- (3.3) **[Safety]** The Supplier will comply with relevant Commonwealth, State, and Territory legislation and DVA policy and procedures regarding occupational health and safety.

- (3.3) **[Product and Service Guarantee]** The Supplier will guarantee all work undertaken including that of subcontractors engaged, spare parts and materials used will comply with all relevant and applicable building codes laws and will be able to be used in the manner intended and for the purpose intended for a period on 24 months from the date of Inspected installation. Further more the Supplier undertakes to rectify or replace at their expense and within the delivery time frames any work or materials so requested by HenryCare or the DVA.
- (3.4) **[Security]** The Supplier warrants that veteran personal information handled ie. records and data including electronic data will be protected against loss, unauthorised access, use, modification and disclosure and against other misuse including unauthorised disclosure of information by or to a third party. Minimum security standards are set out in the specified sections of the DVA Protective Security Manual.

4: Standards of Performance

- (4.1) **[General standards]** The Supplier agrees to:
- (a) ensure that the Services are performed properly and completely, including in a manner consistent with the Stated Purpose. The Stated Purpose is to provide a Rehabilitation Appliance Service under the Rehabilitation Appliance Program (RAP) whereby entitled persons who hold a gold or white repatriation health cards are provided with aids and appliances as clinically necessary.
 - (b) conduct itself with due care, skill and diligence, including exercising decorum and courtesy when dealing with any person, or the property of any person;
 - (c) meet obligations arising under any Law, including Anti-Discrimination Laws; and
 - (d) comply with any Law (or Commonwealth policy) applicable to the use of or conduct at any premises, including
 - occupational health and safety rules (eg, a smoke-free workplace), and
 - procedures referred to in Clause 3 [Quality, best practice, safety etc], and as notified by HenryCare from time to time.
 - Premises are to be left in a clean state, all rubbish removed and all affected areas made good.
- (4.2) **[Delivery Times]** The supplier undertakes to complete each job offered within prescribed delivery times of Five (5) days for Off the Shelf product installations (grab rails, hand showers etc) and Ten (10) days for Custom built installations (hand rails, chair platforms etc). Failure to consistently achieve these delivery times will result your services no longer being requested.
- (4.3) **[Product Brands]** Where the supplier installs off the shelf product the supplier undertakes to use only brands that have been approved by HenryCare and listed on the HenryCareWebsite. Each invoice is to list the brand used.
- (4.4) **[Conduct of Staff]** The supplier is required to take into account the general age and frailty of the veteran community when arranging and effecting the delivery of product and or services. When dealing with members of the veteran community all supplier personnel and their subcontractors will do so with respect, courtesy and understanding in accordance with the DVA's Service Charter. Failure to do so will result in your services no longer being requested.
- (4.5) **[Co-ordination of Installation]** The supplier is to co-ordinate the delivery and installation of product and or services with the prescriber (OT), the entitled person (Veteran), the carer and or family as necessary.
- (4.6) **[Assembly and Installation of Minor Modifications]** The supplier is to undertake assembly and placement of minor modifications including but not limited to,
 - Entering residences of entitled persons
 - Moving existing furniture away from area to a safe and secure area
 - assembling and moving equipment to its most appropriate location.
- (4.7) **[Variation of completion Times]** The supplier is to advise HenryCare the entitled person and the prescriber if the nominated completion time is not going to be met within 24 hours of non compliance. An amended date for completion is to be supplied and HenryCare will advise if this is suitable. Where completion has not occurred within the specified time frames HenryCare may at its sole discretion withdraw the job offer contained on the

HenryCare work order and issue it to an alternative supplier. HenryCare will make no payment to the original supplier for work carried out where the work is re-issued.

- (4.8) **[Inspection and Completion]** The supplier agrees that modifications may be inspected during or after completion by a HenryCare representative, an Occupational Therapist of a DVA representative for the purposes of ensuring the modification is meeting the requirements and is to the approved standards. Modifications will only be considered complete when all rubbish produced as a result of the modification has been removed and all affected areas made good and left in a clean state. In the Case of a dispute the DVA is the final arbiter. Where modification have not been completed to the required standard the supplier will be required to rectify the modification at no cost to HenryCare. Should this not occur within the specified time frames HenryCare may at its sole discretion withdraw the job offer contained on the HenryCare work order and issue it to an alternative supplier. HenryCare will make no payment to the original supplier for work carried out where the work is re-issued.
- (4.9) **[Responsibility]** HenryCare relies on the Supplier performing to high standards and (unless HenryCare states otherwise in writing) the Supplier agrees that it bears ultimate responsibility for the provision of the Services, undiminished by other factors within the reasonable control of the Supplier, including:
- (a) the appropriateness of the efforts of any of its Personnel;
 - (b) the existence of a dispute or dispute resolution process, including about the exercise of any HenryCare discretion and any conditions imposed.

5: No employee, partner or agent status

- (5.1) **[Independent contractor]** The Supplier acknowledges that under these Terms and Conditions it gets paid to achieve specific outcomes as requested on a job by job basis, largely supplies its own Personnel and equipment for delivery of the Services and bears the risks, including liability for defective work. Accordingly, the Supplier agrees these Terms and Conditions do not:
- (a) entitle the Supplier (or its Personnel) to employment entitlements, including annual, sick or long service leave, superannuation or workers' compensation from HenryCare; or
 - (b) make the Supplier (or its Personnel) an employee, partner or agent of HenryCare.
- (5.2) **[Not an agent without express authorisation]** The Supplier agrees to not represent itself, and agrees to ensure that its Personnel do not represent themselves, as:
- (a) being an employee or partner of either the DVA or HenryCare, (or its Personnel); or
 - (b) able to bind or represent the DVA, HenryCare (or its Personnel) beyond any express authority given in writing as part of these Terms & Conditions.

6: Supplier and Subcontractor Personnel

- (6.1) **[Managing specified personnel]** The Supplier agrees to ensure that any Personnel used in the performance of service
- (a) are appropriately qualified, and of a fit and proper nature, to perform the services;
 - (b) are appropriately Licenced, to current standards, to perform the services;
 - (b) consent to DVA, or HenryCare where so requested, conducting appropriate security or other police checks/clearances, and provide any undertakings sought.
 - (c) conduct the Services according to these Terms and Conditions;
 - (d) promptly notify HenryCare if they cannot meet any of the Supplier's obligations under these Terms and Conditions; and
 - (e) will have access only to such official information as is required for the Personnel to perform their duties.

(6.2) **[Replacement personnel]** The **Supplier** agrees:

- (a) that **HenryCare** may require it to promptly remove **Personnel** (including any specified under [clause 6.1](#)) from any aspect of the **Services**;
- (b) if requested, to promptly nominate **potential** replacement **Personnel**; and
- (c) if it cannot provide **Personnel** acceptable to the **HenryCare**, **HenryCare** may cancel the Work Order and supply alternative **Personnel**.

(6.3) **[Subcontractors]** The **Supplier** agrees to:

- (a) notify **HenryCare** in the event of any subcontractors being used, and to provide details of any **subcontractor** performing tasks in relation to this **Terms & Conditions** if so requested by **HenryCare**.
- (b) ensure the continuing suitability of subcontractors (including compliance with **Law** generally, **Anti-Discrimination Laws**, and relevant security requirements as set out in **these Terms and Conditions**).
- (c) ensure that no subcontractor restricts **HenryCare's** **Legal Rights**;
- (d) inform subcontractors about obligations arising under these **Terms and Conditions** and
- (e) properly pay or reward subcontractors under any relevant subcontract, including accounting properly for all tax-related issues.

7: Indemnity and insurance

(7.1) **[Supplier's liability]** The **Supplier** agrees to indemnify **HenryCare** and **DVA** (and its **Personnel**) against any **Loss** reasonably incurred, at any time, in relation to these **Terms and conditions**, from any **Claim**, regarding or incidental to any:

- (a) fault, including deficient or inaccurate information, negligence (whether involving acts or omissions) or wilful misconduct, of the **Supplier** or its **Personnel**;
- (b) complaint or **Claim** under [clause 11.2 \[Complaint handling\]](#);
- (c) breach of [clause 12 \[Privacy, confidentiality and no conflict of interests\]](#);
- (d) breach of **Intellectual Property Rights**, whether involving any assignment, licence or warranty under [clause 2 \[IPRs\]](#); and
- (e) workers' compensation or other insurance payments or **Claims**, including for premiums or compensation paid in relation to the **Supplier** or its **Personnel**.

(7.2) **[Scope of liability]** The **Supplier's** liability under [clause 7.1 \[Liability\]](#):

- (a) will not exceed the full amount of the relevant **Loss**; and
- (b) is reduced proportionally to the extent that **DVA** or **HenryCare** was at fault in contributing to the **Loss**; but
- (c) does not exclude any other **Legal Rights** available to **DVA** or **HenryCare**.

(7.3) **[Insurance and risk management]** The **Supplier**, in ensuring its own viability as well as to support its commitments under these **Terms and Conditions**, agrees to:

- (a) obtain and maintain appropriate insurance from a reputable insurer, as agreed in **Insurance Requirements**;
- (b) promptly prove, upon request, that its insurance is current;
- (c) enable **HenryCare** to communicate directly with its insurer; and
- (d) conduct any risk management activities as agreed and identified in these **Terms and Conditions**.

8: Insurance Requirements

(8.1) The **Supplier** must maintain full levels of insurance cover to properly protect **HenryCare's** and the **DVA's** interests for the **Services**. The **Supplier** will also be expected to comply with all relevant insurance requirements, including conducting and improving relevant risk management practices and incident notification processes.

(8.2) Specifically, the **Supplier** warrants that it has, and will maintain:



- public risk/liability insurance for not less than \$10,000,000 per claim covering liability owed to another person who suffers loss or damage by reason of the **Supplier's** business activities;
 - workers' compensation insurance as required by State/Territory law, sufficient for any place that its relevant **Personnel** are involved with these **Terms & Conditions** or, if the **Supplier** is an individual, appropriate disability income insurance for illness and injury.
- (8.3) The Supplier also warrants any subcontractor used in the performance of the **services will have appropriate insurance as specified in these Terms & Conditions**
- (8.4) The **Supplier** agrees to provide copies of certificate/s of currency to the **HenryCare** upon request, **including details of limits on cover.**

9: Invoicing

- (9.1) **[Invoice a pre-requisite]** To obtain payment, the Supplier agrees to submit an invoice, separately identifying labour, materials, the quantity and brand of off the shelf product used, supported by a HenryCare Work Order signed and dated by the entitled Veteran as evidence of completion.
- (9.2) **[Tax invoice]** The Supplier is registered for GST and agrees to only submit complying tax invoices separately identifying labour and materials used for each service or, where applicable, authorise a Recipient Created Tax Invoice (RCTI), complying with the A New Tax System (Goods and Services Tax) Act 1999:
- (a) in relation to goods or services that are Taxable Supplies, both GST and GST Free; and
 - (b) at the same time as submitting an invoice under clause 9.2 [Invoice a pre-requisite];
 - (c) where "Recipient Created Tax Invoice" and "Taxable Supplies" have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.
- (9.3) **[Withholding tax]** The Supplier acknowledges that unless it provides HenryCare with its Australian Business Number, HenryCare may need to withhold tax from payments.
- (9.4) **[Discrepancies]** The Supplier agrees that HenryCare may:
- (a) check and rectify discrepancies in any payments or assistance;
 - (b) offset any overpayment against future payments; and
 - (c) recover, as a debt, any money owing to HenryCare (plus reasonable interest), including any outstanding prepayment amount.

10: DVA Service Charter, APS Values and Codes of Conduct

- (10.1) **[DVA Service Charter]** The Supplier agrees to conduct all its activities in a manner consistent with DVA's Service Charter (as amended from time to time). This is available on DVA website at: <http://www.dva.gov.au/media/aboutus/charter/index.htm>.
- (10.2) **[APS Values]** The Supplier agrees to conduct all its activities in a manner consistent with the Australian Public Service (APS) Values (*Public Service Act 1999, s. 10*). These recognise that the APS, among other things:
- is apolitical, performing its functions in an impartial and professional manner;
 - provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves;
 - has the highest ethical standards;
 - is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;
 - focuses on achieving results and managing performance; and
 - is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public.

- (10.3) **[APS Code of Conduct]** The Supplier agrees to conduct all its activities under these Terms & Conditions in a manner consistent with the Australian Public Service (APS) Code of Conduct (*Public Service Act 1999, s. 13*). These recognise that the APS, among other things:
- behaves honestly and with integrity;
 - acts with care and diligence;
 - treats everyone with respect and courtesy, and without harassment;
 - complies with all applicable Australian laws;
 - maintains appropriate confidentiality about dealings with any Minister or Minister's member of staff;
 - discloses, and take reasonable steps to avoid, any conflict of interest (real or apparent);
 - uses Commonwealth resources in a proper manner;
 - does not provide false or misleading information in response to a request for information that is made for official purposes;
 - does not make improper use of inside information, in order to gain, or seek to gain, a benefit or advantage;
 - behaves in a way that upholds the APS Values and the integrity and good reputation of the APS; and
 - is at all times to behave in a way that upholds the good reputation of Australia.

11: Governmental Framework

- (11.1) **[Public impact]** The Supplier agrees to preserve the integrity and good reputation of HenryCare and the DVA, including when dealing with any person and the public.
- (11.2) **[Complaint handling]** If a person makes any complaint that may affect HenryCare or the DVA's integrity or good reputation, or if any Claim made against the Supplier relates to specific work orders issued by HenryCare the Supplier agrees to:
- (a) comply with any agreed complaints handling procedures issued by HenryCare from time to time, including any set out under **Clause 13 [Dispute Resolution]**;
 - (b) promptly notify HenryCare about the complaint or Claim's nature, in particular where the Supplier receives a complaint alleging an interference with the privacy of an individual by the Supplier or any of its Personnel or subcontractor's personnel; and
 - (c) allow HenryCare to intervene as it decides, including managing or settling the complaint or Claim.
- (11.3) **[Access]** The Supplier agrees to provide, or arrange, prompt reasonable access for "Accountable Personnel", HenryCare (including any nominated representative) and or DVA personnel, to:
- (a) premises where the Services are or were being undertaken or delivered, including by its Personnel; and
 - (b) Material relating to any specific job issued to the Supplier by HenryCare, wherever located, including any records and system of accounting in use connected with the Specific Jobs.
- (11.4) **[Informed consent]** To ensure it can meet its obligations under clause 12.3(b), especially in relation to personal information such as medical records or financial details, the Supplier agrees to obtain the informed consent of all relevant persons including any veterans that may be receiving services from the Supplier. This may be achieved by noting that the person has been made aware that information of that kind is able to be accessed by DVA.
- (11.5) **[HenryCare to be involved]** If "Accountability Personnel" approach the Supplier directly, then the Supplier agrees to immediately seek directions from HenryCare about appropriate steps to take. For example, DVA may need to raise issues such as privacy, confidentiality, security, immunity from disclosure or the need for appropriate warnings.
- (11.6) **[Definition: "Accountability Personnel"]** In clauses 11.3 [Access] and 11.5 [HenryCare to be involved], "Accountability Personnel" means an individual performing statutory or Parliamentary functions, including as authorised by the Auditor-General, the Ombudsman, the National Archives of Australia, the Privacy Commissioner, Parliament, or a Parliamentary Committee, and the Contractor acknowledges that any of these may name the Supplier in a public report or comment lawfully on these Terms and Conditions.
- (11.7) **[Allocated Official, Outsider etc]** The Supplier acknowledges that it, or its Personnel, or its sub contractor's personnel, may become directly subject to Commonwealth Law. This includes as an allocated "Official" under

the *Financial Management and Accountability (FMA) Regulations* (being a **person** performing a financial task or procedure regarding “public money”, **including** its commitment, expenditure, management or control).

- (11.8) **[Procurement reporting]** The **Supplier** acknowledges that certain details about the nature, price and **parties** to **Commonwealth** contracts must generally be gazetted and may also be described in its Annual Reports.
- (11.9) **[Administrative law]** The **Supplier** agrees to cooperate with HenryCare and the **DVA** in its obligations under administrative law. This **includes** cooperation in the handling of requests for access and applications for review of decisions under the *Freedom of Information Act 1982*. It also includes cooperating in relation to procedures regarding any administrative review tribunal or as if the **Contractor** were a “Commonwealth Institution” under the *Archives Act 1983*.
- (11.11) **[Other scrutiny]** The **parties** may supplement this **clause 11** as agreed in **clause 10 [DVA Service Charter, APS values, Codes of Conduct]**.

12: Privacy and confidentiality

- (12.1) **[Privacy applies]** The Supplier agrees (with words in inverted commas in this clause adopting definitions from the Privacy Act 1988) to act as if it were a “record-keeper” regarding “personal information” and to comply with:
- (a) the “Information Privacy Principles” (regulating collection, solicitation, security, use and disclosure of personal information);
 - (b) policies of **DVA** or the “Privacy Commissioner” relating to managing “personal information”, **including** cooperating with reasonable requests from the “**Privacy Commissioner**”;
 - (c) the **HenryCare’s** directions about managing “personal information”, in particular involving “Privacy Commissioner” recommendations about these **Terms and Conditions**;
 - (d) **DVA’s** prohibition against trans-border flows of “personal information” without prior approval by **DVA**; and
 - (e) section 95C, and acknowledge section 95B, of the *Privacy Act 1988*, and in particular agrees not to use or disclose personal information or engage in any practice that would breach section 16F (direct marketing), a National Privacy Principle (NPP) (particularly NPPs 7 to 10), or an Approved Privacy Code (APC), where that section, NPP or APC is applicable to the Supplier, unless:
 - (i) in the case of section 16F - the use or disclosure is necessary, directly or indirectly, to discharge an obligation under these **Terms and Conditions**; or
 - (ii) in the case of an NPP or an APC - where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under these **Terms and Conditions**, and the activity or practice which is authorised under these **Terms and Conditions** is inconsistent with the NPP or APC.
- (12.2) **[Confidential information not to be disclosed]**
- (a) The Supplier must not, without the prior written consent of the HenryCare, disclose confidential information of the entitled person to a third party.
 - (b) In giving written consent to the disclosure of confidential information, HenryCare may impose such conditions as it thinks fit, and the Supplier in disclosing the confidential information agrees to comply with those conditions..
- (12.3) **[Definition: Confidentiality]** In **clause 12.2 [Confidential information not to be disclosed]**, the phrase “confidential information” means:
- (a) the information, if any, described as confidential by any Federal or State Government Acts or regulations; and
 - (b) information that is agreed between the parties
 - in writing in accordance with clause 12.3(d), and
 - as constituting confidential information for the purposes of these Terms & Conditions.
 - (c) **[Exceptions to requirement of confidentiality]** The provisions of **clauses 12.2 and 12.3** do not apply where the confidential information -
 - i. is required or authorised to be disclosed by law; or
 - ii. is or becomes public knowledge other than by breach of this **clause 12**; or

- iii. is disclosed to or by the responsible Minister in response to a request by a House or Committee of the Parliament of the Commonwealth of Australia, or relevant State or Territory Parliament, or the Australian National Audit Office (ANAO); or
 - iv. is disclosed by the party to its Personnel solely in order to comply with obligations, or to exercise Legal Rights, under these Terms & Conditions; or
 - v. is shared by DVA within DVA's organisation, or with another agency, where this serves the Commonwealth's legitimate interests.
- (d) **[Additional confidential information]** The parties may agree in writing that certain additional information is to constitute confidential information for the purposes of these Terms & Conditions.
- (e) **[Period of confidentiality]** The obligations under this clause 12 continue, notwithstanding the expiry or termination of these Terms & Conditions.
- (i) in relation to any information which the parties agree in writing after the commencement of these Terms & Conditions is to constitute confidential information for the purposes of these Terms & Conditions; or
 - (ii) until such time as the confidential information becomes public knowledge or is no longer declared confidential by the party claiming the confidentiality.
- (f) **[No reduction in privacy obligations]** Nothing in this clause 12 derogates from any obligation which either party may have either under the *Privacy Act 1988* as amended from time to time, or under these Terms & Conditions, in relation to the protection of personal information.

13: Dispute Resolution

- (13.1) If a dispute is not resolved the parties agree to act in good faith to endeavour to resolve the dispute using external informal dispute resolution techniques, such as mediation, expert evaluation or determination, but not arbitration.
- (13.2) In particular, the parties will act in good faith to endeavour to agree within 10 days (or a period agreed between them in writing, depending on the issue in dispute) about:
- the dispute resolution technique and procedures to be adopted;
 - the timetable for all steps in those procedures; and
 - the selection and payment of the independent person required for the agreed technique.
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- (13.3) If the parties cannot agree as above, then they will refer the dispute to the Australian Commercial Disputes Centre (ACDC), with the object of having the dispute settled by mediation, in which case each party will bear its own costs.
- (13.4) The Supplier agrees to manage complaints in relation to the delivery of the Service in accordance with the Requirements of these Terms and Conditions.