

# Sea of White Supply Terms and Conditions

## 1. Supply of Goods or Services

- 1.1 In consideration of your agreement to pay the Price We will supply to You the Goods and perform the Services.
- 1.2 We will endeavour to supply to You the Goods and Services in accordance with the Contract's provisions and with industry established standards.

## 2. Delivery

- 2.1 We will deliver and, where applicable, install the Goods at the Delivery Address by the Delivery Date.
- 2.2 If You fail to take delivery including fail to cause the place of delivery to be ready then We can terminate the Contract and require You to pay the Loss to Us on demand.
- 2.3 You agree We have the discretion to determine the Loss.

## 3. Performance

- 3.1 You must otherwise take receipt of the Goods and/or Services in accordance with the terms of this Contract.
- 3.2 Variations to the Goods specifications must be in writing agreed as a variation to this Contract's terms.

## 4. Title and Risk

- 4.1 Title in Goods only passes to You on full payment of the Price.
- 4.2 Risk in Goods passes to You when the Goods are delivered to You.
- 4.3 You must not grant any person any security interest in Goods, and will not part with possession of Goods, unless and until they are paid for in full.
- 4.4 You charge your interest in the Goods and in your personal and land to better secure Our full payment for all Goods and Services and you consent to Us registering this interest against all of Your personal property and any land interests You have. You will sign all documents and provide all information and assistance required to give effect to registrations. You waive your right to receive any verification statement in relation to any such registration.
- 4.5 You agree and will allow Us to enter onto land owned or controlled by You in order that We can recover Goods.
- 4.6 If You are a corporation then Your directors enter into this Contract in consideration of their request that We agree to these terms, and in doing so charge their individual land interests and personal property to better secure Your due payment and other Contract obligations.

## 5. Price

- 5.1 You must pay to Us the Price for the Goods and Services in accordance with Our trade terms.
- 5.2 The Price is GST exclusive unless stated otherwise.
- 5.3 The Price is exclusive of all and any Loss incurred by Us for which You indemnify Us and for which We can require, and you agree You will pay to Us, on demand.

## 6. Quality

- 6.1 We will endeavour to cause Goods and Services to match Contract specifications.
- 6.2 Our Services will be undertaken by suitably qualified people.
- 6.3 You must inspect and make any claim in relation to Defective Goods or Services within 5 working days of Our determined completion.
- 6.4 We must be provided an opportunity by You to rectify any alleged installation defect or to replace any Defective Goods.

## 7. Disclaimer and Limitation of Liability

- 7.1 We are not responsible for:
  - (a) any defect in Goods for which a manufacturer warranty can be claimed;
  - (b) any Loss to Goods attributable to treatment by You, including your customers, employees, sub-contractors, invitees or other person associable with You;
  - (c) any failure to treat the Goods in accordance with what is reasonable given the design and/or expected use, common sense, and guidelines or reasonable requests provided by Us;
  - (d) repairs made to Goods alleged as defects if such repairs are caused to be done before We are provided an opportunity to sight or to make a repair or give an replacement;
  - (e) reasonable delay in delivering the Goods; or
  - (f) all or any Loss save only to the extent Loss cannot be excluded by Law.
- 7.2 Our liability is limited to re-supplying and reperforming the provision of Goods and Services.
- 7.3 We may, but are not required, to assign to You the benefits of Goods manufacturers warranties.

## 8. Indemnities

- 8.1 You will indemnify Us and agrees to hold Us harmless from all claims for:
  - (a) injury to or death of any employee, agents, suppliers or subcontractor, except to the extent the claim for such injury or death arises solely as a result of Our negligence or Our breach of Contract;
  - (b) damage to or destruction of any property belonging to Us, in Our possession or under Our control except to the extent the claim for such damage or destruction arises solely as a result of the Our negligence or breach of the Contract;
  - (c) injury to or death of any person (including employees, agents, suppliers or subcontractors of Ours) or damage to or destruction of any property (including Our property, Our agents, employees, suppliers or subcontractors) caused by any negligent acts or omission by You or Your employees, agents, suppliers or subcontractors; and
  - (d) failure by You to comply with any law or to strictly comply with this Contract's terms including all and any Loss.

## 9. Insurance

- 9.1 You must obtain and maintain all insurance that would be reasonably expected to be had in the circumstances to protect against losses in relation to the Goods or Services and losses otherwise referred to or foreseeable in these Contract terms.

## 10. Consequential Loss

- 10.1 Despite any other provision in this Contract, neither party is liable for any Consequential Loss suffered by the other party unless expressly otherwise stated in writing.

## 11. Dispute Resolution

- 11.1 If a dispute or difference arises between You and Us in respect of any fact, act, matter or thing arising out of or in any way connected with the Contract and one party requires the dispute or difference to be resolved, then that party must promptly give the other party a written notice giving details of the dispute.

**11.2** Within 14 days of a party receiving a notice referred to in this clause, You and We and/or our delegates must meet and attempt to resolve the dispute in good faith.

**11.3** If, within 14 days of the meeting referred to in this clause the dispute is still not resolved, then, either party may proceed to litigation.

## 12. Cancellation/Termination

**12.1** You can cancel or vary all or any portion of this Contract at any time by giving notice to Us. In the event a cancellation causes Loss to Us in our determination You will immediately be liable for all Losses and will pay to us that value on demand made by Us. A certificate provided by Us concerning the extent of the Losses is deemed sufficient evidence of the Losses.

**12.2** The Contract may be terminated by Us at any time immediately upon notice in the event of Your breach of any term or provision of the Contract.

## 13. Goods and Services Tax (GST)

**13.1** Unless otherwise stated, any amounts payable by You to Us is exclusive of GST.

**13.2** If a supply under this agreement is subject to GST, You must pay to Us an additional amount determined by the prevailing GST rate.

**13.3** The additional GST amount is payable at the same time as the amount payable for the supply.

## 14. Interest and Loss

**14.1** We are entitled to charge interest on all and any late payments due to You to Us at a rate 5% higher than the Reserve Bank of Australia's then prevailing annual cash rate on a simple interest basis for such number of days as the payment remains overdue.

**14.2** You agree the above stated interest rate is a reasonable measure of the damage we will suffer by reason of your late payment.

**14.3** You further agree to pay to Us on demand for all and any Loss in relation to expenses we incur to recover amounts owed by You to Us under this Contract's terms.

## 15. Acceptance

**15.1** Your acceptance of these terms can be by Your continuing to trade with us for Good and Services now or in the future.

## 16. Guarantee

**16.1** If You are a corporation then at least 1 director of yours agrees to guarantee the payment of all amounts payable by You to Us under this Contract's terms.

## 17. Definitions

**Consequential Loss** means loss or damage arising from a breach of contract, in tort, otherwise under law, equity or statute, including without limitation; loss of use, loss of profit, loss of production, loss of business, loss of opportunity, loss of chance, damage to goodwill, damage to business reputation, loss of access to markets or market share and liabilities to third parties.

**Contract** means a purchase order, quotation, other supply agreement or any other document incorporating this document into an agreement between You and Us.

**Defect or Defective** means not in accordance with the Contract.

**Delivery Address** means Your address or another stated address in the Contract.

**Delivery Date** means such date stated in the Contract.

**Goods** means physical items described in the Contract.

**"GST", "GST law"** have the meanings given to them by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).

**Loss** means all and any expense, damage, cost or other diminution in value suffered including legal expenses at full indemnity rates.

**Price** means the price established by the Contract.

**Services** means those such described as deliverable in the Contract in.

**Us/Our/We** means and includes Nicita Pty Ltd ACN 620 869 098 trading as Sea of White and such other company as provides these terms and conditions to you

**Warranty Period** means any warranty We provide.

**You/Your** means the person with whom We have established these terms and conditions and the Contract.

## Interpretation:

In this Contract, unless the context requires otherwise:

- (a) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (b) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (c) a reference to a person includes that person's executors, administrators, successors in title and assigns;
- (d) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- (e) including is not a word of limitation and means "including but not limited to"; and
- (f) if a word or phrase is defined, cognate words and phrases have a corresponding meaning.

## 18. General Provisions

**18.1** This Contract contains all terms agreed between us and supersedes all and any of Your terms and conditions.

**18.2** You and We are independent contractors.

**18.3** This Contract is governed by and construed with reference to the laws of the State of Western Australia.

**18.4** The parties submit to the exclusive jurisdiction of the Western Australian Courts.

**18.5** Notices may be given by email, post or fax and if We give notice it is deemed delivered by post 3 business days after being posted or to You the day it is sent by fax or email.