

## 1. APPLICATION

- 1.1 These terms and conditions will apply to all goods and services supplied by Us from 1 January 2020 (**Effective Date**).
- 1.2 From the Effective Date, any prior representations, statements or promises in relation to Our goods and services are merged in and superseded by these terms and conditions and You may not rely on them.
- 1.3 We may in Our discretion vary these terms and conditions by reasonable prior notice to You. All such variations will apply to any and all goods or services We supply to You after the date We notify You of the change.
- 1.4 In all of Your dealings with Us, We will assume that You have read and understand these terms and conditions. You must raise any concerns with Us before You ask Us to supply goods or services or sign the Agreement.
- 1.5 These terms and conditions operate subject to any special conditions agreed to by Us and You from time to time in writing. Special conditions reduced to writing by Us will prevail to the extent of any inconsistency.
- 1.6 We will assume, if You ask Us to do work for You, that You agree to these terms and conditions. If You do not accept these terms and conditions You must tell Us that before You ask Us to do work for You.

## 2. PRICING

### Prices

- 2.1 Prices for Our services will be provided to you on application or in response to a request for quote and are subject to change from time to time in Our discretion and without notice.

### Quotes

- 2.2 Unless We expressly agree otherwise in writing, quotes We provide are valid for ten (10) Business Days. If You do not accept a quote within this time, it will be deemed withdrawn.
- 2.3 You may only accept a quote in writing, by the means from time to time approved by Us for that purpose.
- 2.4 Quotes for services will generally be prepared based on our standard fees current at the date of quote. However, We reserve the right to quote on an alternate basis in Our discretion.

### Service

- 2.5 Any conduct money must be paid by You at the same time as You provide Us with Your instructions. Unless We otherwise agree, You must provide this in the form of a cheque payable to the person to be served (and not payable to Us).
- 2.6 Service fees include up to three (3) attempts at service at a single address. Additional attempts, or attempts at alternate addresses, automatically incur additional fees. If you do not want Us to attempt service at an alternate address You must tell Us this at the same time as You provide Us with Your instructions.
- 2.7 Documents are Your responsibility. We accept no responsibility for incomplete, inaccurate, or any errors in documents (this includes the absence of Forms 1 - 4 which may be applicable for interstate service).
- 2.8 Affidavits of attempted service will only be provided on request.
- 2.9 We will make every effort to effect service however We are unable to make any guarantee (please refer clause 6).

### Interstate and Country

- 2.10 We reserve the right to on-charge to You at cost, reasonable postage, transport and handling connected

with interstate and/or country (that is, non-CBD) services.

### Travel

- 2.11 Where services are supplied outside of the Australian Capital Territory, all travel and transport expenses will be charged to you on a full cost-recovery basis.
- 2.12 We may in our discretion require advance payment of all or a portion of Our actual or anticipated travel and transport expenses. Where it is not yet possible to issue a Tax Invoice, a receipt will be provided so that a credit can be applied to Our Tax Invoice once available.

### Hourly Rates

- 2.13 Where Our services include hourly rate work, any estimate of total fees or total hours We may provide is based on the information available to Us at the time the estimate is provided. We will necessarily have made certain assumptions, for example, that Your requirements will not change in any material particular after the date the estimate is provided. We will use Our best endeavours to meet any estimates provided. However, estimates are not quotes and should be treated with caution and as an indicative guide only.

### Urgency

- 2.14 We reserve the right to apply a surcharge in situations of urgency other than of Our making (that is, where You require <48 hours turn-around or same-day urgent service).

### Refunds

- 2.15 No refunds are available after We have engaged Our agent.

## 3. PAYMENTS

### Terms

- 3.1 Unless We agree otherwise and subject to clause 2.12, You must pay Us for all services supplied in full and without deduction or set-off within fourteen (14) days of invoice.

### Third Parties

- 3.2 You agree that You are responsible for payment of Our invoices even if You have engaged us on behalf of a third party.

### Payment Method

- 3.3 Unless We agree otherwise, all payments to be made by You to Us in connection with the Agreement must be made by one of the methods We approve from time to time. We reserve the right to surcharge merchant fees. We currently accept payment by cheque or electronic funds transfer.

### GST

- 3.4 If GST is levied or imposed on or in respect of any supply made by Us under or in accordance with the Agreement, GST is payable by You to Us at the rate levied or imposed, in addition to the amount otherwise payable.
- 3.5 Import duties and/or taxes applicable to Your freighting destination may also apply. We are not responsible for such duties and/or taxes. You should rely on Your own enquiries in this regard.
- 3.6 Any obligation You have to reimburse Us for an amount We have paid to a third party on Your behalf includes GST on the amount paid or payable except to the extent that We may be entitled to claim an input tax credit for same.

## 4. SUSPENSION

- 4.1 You agree that We may in Our discretion suspend any further performance of the Agreement if you dispute,

fail or refuse to pay any amount which We believe is due and payable by You to Us in connection with the Agreement or otherwise breach the Agreement.

- 4.2 You agree that We will not be liable for any Claim or Liability relating to or arising from any decision by Us to suspend performance in accordance with clause 4.1.

## 5. DEFAULT

### Recovery of unpaid amounts

- 5.1 In the event that You fail or refuse to pay Us money in full or on time, You must pay Us for Our time spent in recovering the unpaid amount from You calculated at \$165.00 per hour plus GST.

### Legal Costs

- 5.2 You agree to pay to Us within seven (7) days of demand all Legal Fees, liabilities and/or expenses incurred or paid by Us in respect of or in connection with:

- (a) any failure by You to comply with the Agreement in full and on time;
- (b) any reckless, intentional or negligent act or omission by You or any other person for whose actions You are jointly, severally, proportionately or vicariously liable;
- (c) the exercise or purported or attempted exercise of any of Our rights arising from or in connection with the Agreement or for the preservation of those rights; and/or
- (d) the enforcement of any obligation You have to Us pursuant to or in connection with the Agreement.

## 6. LEGAL RISK & LIABILITY

- 6.1 All Liabilities, conditions, warranties and guarantees which We may exclude from Your dealings with Us are expressly negated.

- 6.2 Including in particular, We make no warranty and give no guarantee that our goods or services will be fit for any particular purpose or for Your specific intended purpose. You must rely entirely on Your own enquiries, skill, experience and expertise in this regard.

- 6.3 Without limitation, We specifically disclose and You expressly acknowledge that We cannot and do not make any guarantees or promises as to the results of any 'Skiptrace' service. Our obligation to You in connection with a 'Skiptrace' service is limited to making the enquiries we consider appropriate in Our discretion, and delivering a report to You in relation to same.

- 6.4 We limit any Liability We may incur to You for failure to comply with Part 3-2, Division 1 of the Australian Consumer Law to, at Our election, either:

- (a) supplying the services again; or
- (b) paying the cost of having the services supplied again.

- 6.5 We limit Our maximum aggregate Liability to You in connection with the Agreement to the total amount of all money paid by You to Us in relation to the relevant supply.

- 6.6 Any amounts paid by Us under, and the value of any of Our goods or services replaced, repaired or supplied by Us in connection with clauses 6.4, shall count towards calculation of Our maximum aggregate Liability as described in clause 6.5.

## 7. CONFIDENTIALITY

- 7.1 The Agreement is confidential to You and to Us. Except where You are obligated by law to disclose the

Agreement, You must not at any time without Our prior written consent or approval:

- (a) disclose any part of the Agreement to any other person; or
- (b) do any other thing which is inconsistent with the confidential nature of the information (or permit any such thing to be done by any other person).

- 7.2 Where You are obliged by law to disclose the Agreement You must take reasonable care to ensure that Your disclosure is strictly limited to the extent necessary to comply with the relevant law.

- 7.3 Your obligations under this clause 7 shall continue indefinitely.

## 8. NOTICES

- 8.1 Subject to clause 8.2, all notices to be given in connection with the Agreement must be given in writing by any one of the following means:

- (a) by sending it to the party to be served or its solicitor by post (or, where available, to a solicitor's document exchange), in which case it shall be deemed to be given and received two (2) Business Days after it has been sent;
- (b) by sending it to the party to be served or to its solicitor by delivery and read receipted email sent to:
  - (i) in the case of a notice addressed to You, to Your Email Address; or
  - (ii) in the case of notice addressed to Us, to Our Email Address;
- (c) by delivering it personally to the party to be served or to its solicitor, in which case it shall be deemed to be given and received on the day so delivered.

- 8.2 We may provide notice of changes to these terms and conditions and related documents by any means which we reasonably believe will bring the changes to Your attention including for example by publication on Our website, bulk email or newsletter.

- 8.3 A notice given, or a document signed or served, on behalf of any party by any director or company secretary or solicitor of that party shall be deemed to have been given, signed or served by that party personally.

## 9. MISCELLANEOUS

### Health and Safety

- 9.1 At the time You provide Us with Your instructions You must notify Us if You are aware of any circumstance which may endanger the health or safety of Our personnel in connection with the Agreement. For example, previous acts or threats of violence or unsafe premises.

- 9.2 You agree that We shall not be required to fulfill Our obligations under the Agreement in any circumstance where We acting reasonably believe that by doing so We would place the health or safety of Our personnel at risk.

### Privacy

- 9.3 You authorise Us to use Your information to:
- (a) comply with Our obligations under the Agreement; and
  - (b) further develop Our business, including by publishing Your plain text name and business images or logos for promotional purposes.

### **Subcontracting**

- 9.4 We may at any time in Our discretion and without Your prior consent subcontract Our obligations under or in connection with the Agreement.

### **Entire Agreement**

- 9.5 The Agreement constitutes the entire understanding between You and Us in relation to Our supply of goods or services. Any prior representations, statements or promises made by Us are merged in and superseded by the Agreement and You expressly acknowledge that You have not relied on them.

### **No Set-Off**

- 9.6 You must not attempt to offset any alleged entitlement against any monies owing to Us in connection with the Agreement and must not withhold payment by reason only that You claim the alleged entitlement.

### **Succession**

- 9.7 You and We each intend the Agreement to be binding on Your and Our respective Affiliates.

### **No Waiver**

- 9.8 There is no implied waiver by Us in respect of any provision of the Agreement and any delay or failure by Us to enforce any provision of the Agreement will not be deemed to be a waiver. Any waiver granted by Us:
- (a) must be in writing;
  - (b) shall be without prejudice to any other rights; and
  - (c) will only be effective in relation to the particular obligation or breach in respect of which it is given and will not cover subsequent breaches of the same or a different kind.

### **Severance**

- 9.9 If any of the provisions of the Agreement shall be unlawful, void or unenforceable for any reason, the provision shall be deemed severable to the extent that it is lawful, void or unenforceable, but shall not affect the validity or enforceability of the remaining provisions.

### **Governing Law**

- 9.10 The Agreement shall be governed by and construed in accordance with the laws from time to time applying in the Jurisdiction. You and We both submit to the exclusive jurisdiction of the courts of the Jurisdiction and, where available, the Commonwealth of Australia, and those that have jurisdiction to hear any appeals from them.

## **10. DEFINITIONS**

- 10.1 Some words and phrases used in the Agreement are defined in the Client Details Form.

- 10.2 Subject to the Client Details Form, in the Agreement:

#### **Affiliates** includes:

- (a) agents;
- (b) employees, subcontractors and volunteers;
- (a) heirs and executors;
- (b) attorneys, guardians, managers and trustees;
- (c) external administrators, including administrators, liquidators (including provisional liquidators), receivers and other 'controllers', whether or not appointed under the *Corporations Act 2001* (Cth);
- (d) trustees mentioned in the *Bankruptcy Act 1966* (Cth);
- (e) any other person acting with a party's actual, constructive or ostensible authority; and

- (f) any other person for whose acts a person maybe held vicariously liable under any Australian law.

**Agreement** means the agreement between You and Us in respect of Our goods and/or services, comprising of and evidenced by:

- (a) this document;
- (b) quotes (if any), accepted by You; and
- (c) all written consents and approvals issued by Us in connection with the Agreement;

as varied from time to time in accordance with the terms of the Agreement (if ever).

**Business Day** means any day from Monday to Friday (inclusive), except for New South Wales public holidays or when Our office is closed during the Christmas period.

**Claim** means any claim, demand, regulatory proceeding, action or cause of action or anything of a similar nature.

**GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Jurisdiction** means the Australian Capital Territory.

**Legal Fees** means legal fees, costs and disbursements on the higher of a full indemnity basis or a solicitor and own client basis, determined without taxation, assessment, or similar process.

**Liability** means any liability, loss, damage, expense or anything of a similar nature (including without limitation settlement costs and Legal Fees) sustained or incurred at any time, actually or contingently.

**Our Email Address** means the email address noted as such in the Client Details Form or any other email address which We notify to You from time to time may be used by You to contact Us in relation to the Agreement.

**Price** means the total of all amounts payable by You to Us under the Agreement.

**Client Details Form** means the document provided by You to Us providing Your details for use in connection with the Agreement.

**Quote** means:

- (a) the written response (if any) We send you in response to any request for quote We receive from You; and/or
- (b) any other document which We describe as a 'Quote' for the provision of services.

**Us, Our, We etc** means Nosyak Pty Ltd ACN 124 559 299 trading as Civic and Commercial Mercantile Services ABN 21 124 559 299.

**Your Email Address** includes the email address noted as such in the Client Details Form and any other email address known or reasonably believed by Us to be used or accessed by You or Your solicitor at a material time.

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