



Sherpa Pty Ltd

Contractor Agreement

1 | TYPE OF ENGAGEMENT

1.1

This Agreement is a standing arrangement for the supply of on demand courier services (Services) by the Contractor and enables the Contractor to be engaged to provide the Services from time to time, with each engagement governed by these terms.

1.2

The Contractor is an independent contractor who offers services to businesses generally and wishes to provide the Services to Sherpa and clients of Sherpa who book delivery services through the Sherpa online platform.

1.3

Sherpa acknowledges and agrees that the Contractor may provide services similar to the Services to other businesses and is free to do so.

1.4

The Contractor acknowledges that Sherpa makes no commitment to require any minimum number of Services implying the payment of a minimum amount of fees to the Contractor.

1.5

Each engagement of the Contractor by Sherpa will be a separate contract of engagement which shall be governed by the terms of this Agreement.

1.6

The Contractor will provide all Vehicles, facilities and equipment necessary to provide the Services.

1.7

The Contractor may assign or subcontract the provision of the Services with the prior written consent of Sherpa but shall be fully responsible, and not relieved from any liability to Sherpa for the provision of the Services notwithstanding that the Contractor has subcontracted or delegated the performance of any part of the Services.

1.8

To the extent applicable, the Contractor will ensure that all personnel and subcontractors to whom it delegates or subcontracts the Services under clause 1.7, meet the standards and obligations imposed upon the Contractor under this Agreement.

1.9

The Contractor understands and acknowledges that:

- a. the Contractor is acting as an independent contractor and has had the opportunity to obtain professional advice in relation the rights and obligations of an independent contractor generally and in relation to the specific rights and obligations of this Agreement;
- b. Sherpa has no liability to meet any of the Contractor's obligations under the Health and Safety in Employment Act 1992 or to pay the Contractor:
 - I. holiday pay, sick pay or any other payment under the Holidays Act 2003;
 - II. redundancy or any other severance pay; or
 - III. other than GST on taxable supplies under the Agreement, taxes or levies, including any levy under the Accident Compensation Act 2001.

1.10

Nothing in this Agreement, and no verbal or written communication between the parties, whether prior to or after this Agreement, will be construed as an express or implied employment agreement or a promise by Sherpa to employ the Contractor.

1.11

The Contractor is not and must not represent as an employee of Sherpa.

2 | CONTRACTOR WARRANTIES

2.1

The Contractor warrants to Sherpa that at the Commencement Date and at all times during the term of this Agreement:

- a. The Contractor is over eighteen (18) years of age;
- b. The Contractor is in possession of a Vehicle that is suitable and fit for the purpose of providing the Services ;
- c. the Contractor will maintain the Vehicle in accordance with Sherpa's recommended standards and policies (though any such standards and policies do not form part of this Agreement) and ensure that the Vehicle meets applicable roadworthy standards;
- d. upon Sherpa's request, provide evidence of Vehicle maintenance standards as set out in 2.1(c);
- e. that appropriate Vehicle insurance so as to cover at a minimum, third party loss and damage (or as otherwise directed by Sherpa);
- f. the Services will be provided in a proper and workmanlike manner; to the reasonable satisfaction of Sherpa;
- g. the Contractor has received training in and understands the Contractor's obligations at law in respect of the delivery of goods, in particular alcohol; and
- h. the Contractor has received training in and understands the Contractor's obligations in respect of food handling, food delivery and temperature regulation.

3 | CONTRACTOR'S OBLIGATIONS

3.1

The Contractor must:

- a. perform the Services with reasonable skill, care and diligence;
- b. comply with all relevant laws and regulatory requirements;
- c. comply with all reasonable requirements of Sherpa;
- d. maintain a New Zealand Business Number and if the earnings of the Contractor exceed the GST threshold, register for GST with the Inland Revenue Department (IRD) and comply with all associated requirements, laws and regulations;
- e. the Contractor must take and maintain during the term of this Agreement all insurances against its own personal liabilities as would be reasonably expected of a Contractor undertaking the Services, this includes but is not limited to goods in transit insurance and Vehicle insurance on the terms specified in item 2.1(e);

3.2

The Contractor is required to comply with the rules, regulations, procedures and policies of Sherpa, as amended from time to time. Sherpa rules, regulations, policies and procedures do not form part of this Agreement unless otherwise specified.

4 | CONTRACTOR'S FEES

4.1

Sherpa will pay to the Contractor the agreed Fees for the supply of Services as recorded in the Sherpa Platform.

4.2

In the event that the Contractor is registered for GST they will notify Sherpa if it ceases to be registered.

4.3

Sherpa will issue Buyer Created Tax Invoices (BCTIs) or Buyer created adjustment notes (BCANs) in accordance with the Goods and Services Act 1985 for taxable supplies made by the Contractor to Sherpa under the GST Act.

4.4

The Contractor will not issue tax invoices or adjustment notes in respect of the same supplies.

4.5

Sherpa may issue BCTIs or BCANs in electronic form.

4.6

The Contractor will supply all such information as may be reasonably required by Sherpa to allow it to prepare BCTIs under this Contract.

4.7

The Contractor will do all such things as may be necessary on its part from time to time, to enable Sherpa to issue BCTIs.

4.8

Sherpa will pay the Contractor the Fees on a weekly basis for the Services provided in the previous week by direct deposit to the Contractor's nominated bank account and upon the provision of an invoice for those Fees.

4.9

The Fees are inclusive of all obligations that Sherpa may have to the Contractor.

4.10

Sherpa may deduct from the Fees due to the Contractor any money due from the Contractor to Sherpa under this Agreement.

5 | GST

5.1

Unless otherwise specified, all Fees are inclusive of any GST payable, or notionally payable, on a supply made under or in connection with this Agreement.

5.2

To the extent that any GST is payable in respect of any supply, the Contractor must remit the GST payment received from Sherpa to the IRD and indemnifies Sherpa against any failure to comply with this clause.

5.3

Where a party is required under this Agreement to pay, reimburse or indemnify another party for any loss, cost or expense, the amount to be reimbursed or indemnified will be the amount of the loss, cost or expense reduced by an amount equal to any input tax credit that the other party is entitled to claim for the loss, cost or expense.

6 | CONFIDENTIALITY AND PRIVACY

6.1

The Contractor shall not at any time during or subsequent to this Agreement:

- a. divulge or disclose any Personal Information (including, but not limited to, customer names, addresses and contact numbers) with respect to Sherpa, Customers, business operations, the Sherpa Platform, or finances of Sherpa which have come into its possession as a result of this Agreement to any third party;
- b. use the Confidential and Personal Information except to the extent necessary for the purposes of this Agreement; or
- c. make any public announcements in relation to the Confidential Information or otherwise in relation to Sherpa without Sherpa's consent

6.2

The name, address and phone number of customers must only be used for the purpose of providing the Services. The Contractor must not retain the personal information of customers (this includes saving the mobile phone numbers, taking screenshots of their route to the delivery address, etc) and should not disclose them to any third party.

6.3

The Contractor must keep secret and must not at any time (whether during or after this Agreement) use for the Contractor's own or another's advantage, or reveal to any person, any Confidential Information. The restrictions contained in this clause will not apply to any disclosure or use authorised by the Sherpa, where reasonably requested by a customer in relation to services provided to that customer or required by law or this Agreement.

6.4

The Contractor must ensure that each of its contractors, employees and personnel who assist in providing the Works comply with the requirements of this clause 6.4.

6.5

These obligations continue beyond the expiry or termination of this Agreement.

7 | YOUR DATA AND INFORMATION

7.1

You acknowledge and agree that we may use and disclose your Personal Information and the Personal information of any of your subcontractors in compliance with our Privacy Policy. This includes us disclosing your name, contact information and location information about your transportation method to our customers and goods recipients.

7.2

You acknowledge that as part of the provision of the Services, the customers and the recipients of the goods are given the opportunity to use the Sherpa Platform to track the location and the delivery of the goods. Accordingly you must, and you must ensure that subcontractors keep GPS location services on the relevant mobile phone turned on at all times during the delivery. By having the GPS location service turned on, you authorise us, the customers and/or the recipients to view the GPS location for the purpose of tracking the goods and any related matters.

8 | PERSONNEL PAYMENTS

8.1

The Contractor will pay all costs and expenses relating to any of its employees and personnel.

9 | INDEMNITY

9.1

The Contractor enters into this Agreement and performs the Services at its own risk and Sherpa will not be liable to the Contractor for any loss, damage, injury or death sustained by the Contractor, any Customer or any other person or to any property or Vehicle howsoever caused.

9.2

The Contractor indemnifies Sherpa against any claim, liability, loss or damage Sherpa suffers because of the Contractor's act or negligence with respect to:

- a. death or injury of any person;
- b. loss, damage to or destruction of property or Vehicle; or
- c. infringement of Intellectual Property

in connection with this agreement or the provision of services by the Contractor.

9.3

The Contractor indemnifies Sherpa against any tax, levy, penalty, damage or compensation which Sherpa may be liable to deduct, withhold or pay by reason of the Contractor being held to be an employee of Sherpa

10 | DISPUTE RESOLUTION

10.1

Any dispute or difference arising out of or in connection with this contract, or the subject matter of this contract, including any question about its existence, validity or termination, shall be referred to mediation in accordance with the Mediation Rules of the New Zealand Dispute Resolution Centre.

10.2

Neither Party shall commence proceedings except any proceedings of an urgent interlocutory nature unless the terms of clause 10.1 have been complied with.

11 | TERMINATION OF AGREEMENT

11.1

Either party may terminate this Agreement at any time without cause or reason by providing seven (7) days' notice in writing, to the other party.

11.2

Either party may immediately terminate this Agreement if the other party breaches any term of this Agreement and such breach is not remedied within seven (7) days of the other party receiving written notice of such breach.

11.3

Sherpa may immediately terminate this agreement if the Contractor:

- a. fails to carry out the Services according to the terms of this Agreement;
- b. becomes bankrupt, or insolvent, or enters into a scheme of arrangement with its creditors;
- c. is charged with any offence involving fraud, dishonesty or a serious road traffic offence; or
- d. without reasonable cause stops providing the Services.

11.4

Upon receipt of written notice of termination by Sherpa, the Contractor will cease work under this Agreement and will do everything possible to mitigate any consequential loss to either party. Sherpa will only be liable to pay Fees for Services provided before the termination.

11.5

If Sherpa terminates this Agreement, the termination will not release the Contractor from liability in respect of any breach, or non-performance, of any obligation by the Contractor under this Agreement.

12 | GENERAL

12.1

This Agreement may be varied by Sherpa by giving the Contractor not less than 28 days' notice in writing. If at the end of the 28 days the Contractor continues to provide services to Sherpa it will be deemed to have accepted the contract variations. If the Contractor does not wish to accept the changes, it may terminate the Agreement in accordance with clause 12.

12.2

If any provision of this Agreement is held to be unenforceable, the remaining provisions will continue in full force and effect.

12.3

Unless specified to the contrary, any notice under this Agreement between the Parties must be in writing and may be personally delivered, mailed, faxed or emailed to the addresses set out in the Details, or to such other addresses as a Party may advise from time to time.

Notices will be deemed to be given::

- a. where served personally, upon delivery; or
- b. where served by post three (3) days after posting; or
- c. where served by electronic mail at the time recorded on the email server from which the electronic mail was sent.

12.4

This Agreement is governed by the laws in force in New Zealand.

12.5

This Agreement forms the entire agreement between the parties in respect of the subject matter of this Agreement and supersedes all prior agreements, understandings, undertakings and negotiations in respect of the matters dealt with in this Agreement.

12.6

Each party shall pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement.

13 | DEFINITIONS AND INTERPRETATION

Agreement means this agreement made between Sherpa and the Contractor.

Confidential Information means any information (regardless of its form and whether provided before or after the commencement of this Agreement) in connection with the Services or this Agreement, but does not include information that is publicly available, other than by breach of this Agreement by the Contractor or a breach by the Contractor of an obligation of confidence owed by the Contractor, and that by its nature is confidential (including but not limited to trade secrets and know how).

Contractor means the independent contractor that has signed this Agreement.

Customers has the meaning given to 'Consumers' as defined in the Consumer Guarantees Act 1993.

Fee means the rate specified from time to time in writing by Sherpa to the Contractor

GST means Goods and Services Tax and has the same meaning as defined in Goods and Services Tax Act 1985 (GST Act) and any other words appearing in the GST Act have the same meaning as defined in that Act.

Personal Information has the meaning given to it in the Privacy Act 2020 (NZ).

Privacy Policy means our privacy policy published on our website <https://www.sherpa.net.au>

Sherpa means Sherpa (NZ) Limited (Co No 8182435).

Sherpa Platform means any website, associated website, domains or associated domains, widgets or applications created, developed, owned and maintained by Sherpa for the purposes of connecting Customers with contractors to perform the Services.

Vehicle means a motorcycle, push bike, car, truck, scooter, van, skateboard or other form of personal transportation owned or leased by the Contractor.

Warranties means the Warranties as set out in clause 2 of this Agreement.