



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 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 sub-contract the provision of the Services with the prior written consent of Sherpa but shall be full 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) as an independent contractor, the Contractor is not entitled to receive from Sherpa any wages, loadings, penalties, employment related entitlements and benefits (including but not limited to annual leave, personal leave, long service leave), superannuation contributions (unless specified otherwise), Pay As You Go payment summaries; and
 - (c) Sherpa will not withhold any income tax from any Fees paid to the Contractor pursuant to this Agreement.

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) maintains appropriate Vehicle insurance for commercial use so as to cover at a minimum, third party bodily injury, loss and damage whilst engaged in activities being conducted as an independent contractor to 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 the responsible service of 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 an Australian Business Number and if the earnings of the Contractor exceed the GST threshold, register for GST with the ATO 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, Vehicle insurance on the terms specified in item 2.1(e) and where required by law, workers' compensation insurance;
- (f) if the Contractor is a sole trader or partnership, or Sherpa is not deemed the Contractor's employer for workers' compensation purposes, the Contractor must have

in place a personal accident and sickness policy of insurance on such terms and in such amount as is reasonably acceptable to Sherpa and Sherpa will have no liability in this regard; and

- (g) whenever requested by Sherpa, the Contractor must produce evidence to the satisfaction of the Sherpa that it is complying with its insurance obligations under this Agreement.

- 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 and upon the provision of an invoice for those Fees.
- 4.2 In the event that the Contractor is registered for GST, Sherpa will issue Recipient Created Tax Invoices (RCTIs) or recipient created adjustment notes (RCANs) in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) for taxable supplies made by the Contractor to Sherpa under the GST Act.
- 4.3 The Contractor will not issue tax invoices or adjustment notes in respect of the same supplies.
- 4.4 Sherpa may issue RCTIs or RCANs in electronic form.
- 4.5 The Contractor will supply all such information as may be reasonably required by Sherpa to allow it to prepare RCTIs.
- 4.6 The Contractor will do all such things as may be necessary on its part from time to time, to enable Sherpa to issue RCTIs.
- 4.7 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.
- 4.8 The Fees are inclusive of all obligations that Sherpa may have to the Contractor, including but not limited to PAYG withholding and superannuation obligations.
- 4.9 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 ATO 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.
- 5.4 Sherpa need not make payment for a taxable supply made under or in connection with this Agreement until they receive a tax invoice for the supply to which the payment relates.

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, Company 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 or required by law or this Agreement.
- 6.4 The Contractor must ensure that each of its employees and personnel who assist in providing the Works comply with the requirements of this clause 6.3.
- 6.5 These obligations continue beyond the expiry or termination of this Agreement.

7 PERSONNEL PAYMENTS

- 7.1 The Contractor will pay all costs relating to its employees and personnel, including all remuneration, employee entitlements, worker's compensation premiums (to the extent applicable), superannuation guarantee contributions and any other taxes required by law.
- 7.2 If Sherpa is required to make superannuation guarantee contributions to avoid a shortfall under the Superannuation Law, Sherpa will make such minimum contributions as required under the law on behalf of the Contractor to a complying nominated superannuation fund.
- 7.3 The Contractor acknowledges that the Fees are inclusive of all payments that Sherpa may be required to make under clauses 7.1 and 7.2.
- 7.4 While the Contractor (or key individual of the Contractor) may be deemed an employee for the purposes of superannuation, nothing in this clause is to be construed as establishing a relationship of employment between the Contractor (or that individual) and Sherpa in any other respect.
- 7.5 Sherpa has the right to recover from the Contractor at any time, any amounts it may be liable to pay in respect of the Contractor or its personnel under clauses 7.1 and 7.2 the Superannuation Law, as well as including but not limited to the payment of any interest or penalties which may be imposed in connection with those liabilities.

8 INDEMNITY

- 8.1 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.

8.2 The Contractor indemnifies Sherpa against any claim, liability, loss or damage Sherpa suffers because of the Contractor's failure to act or negligence with respect to death or injury of a Customer, person, damage to or destruction of property or Vehicle, or infringement of Intellectual Property in connection with the Services.

8.3 The Contractor indemnifies Sherpa against any claim, liability, loss or damage Sherpa suffers because of the Contractor's failure to comply with any laws or regulations.

9 DISPUTE RESOLUTION

9.1 Where, in the event of a dispute arising out of or relating to this Agreement, the parties wish to seek an amicable settlement of that dispute by mediation. The mediation shall take place in Sydney, Australia and be administered by the Australian Disputes Centre (ADC).

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

10 TERMINATION OF AGREEMENT

10.1 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.

10.2 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.

10.3 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 or dishonesty; or
- (d) without reasonable cause suspends the carrying out of the Services.

10.4 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 that part of the Fee that relates to Services provided up to the date of termination.

10.5 If Sherpa terminates this Agreement, such 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.

10.6 Upon termination of this Agreement, the Contractor is required to return all Sherpa property and equipment to Sherpa.

11 GENERAL

11.1 This Agreement cannot be varied, unless both parties agree in writing.

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

- 11.3 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.
- 11.4 This Agreement is governed by the laws in force in New South Wales.
- 11.5 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.
- 11.6 Each party shall pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement.

12 DEFINITIONS AND INTERPRETATION

Agreement means this agreement made between Sherpa and the Contractor.

Company 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.

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 section 4B of the *Competition and Consumer Act 2010* (Cth).

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 the *A New Tax System (Goods and Services) Tax Act 1999* (Cth) (**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 1998* (Cth).

Sherpa means Sherpa Pty Ltd (ACN 168 403 307)

Superannuation Law means *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth) and/or any other acts, regulations or ordinances that govern the payment of superannuation contributions.

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

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