

**O'SHEAS ORGANISATION PTY LTD ACN 113 930 895**  
**TERMS OF ENGAGEMENT FOR SERVICES**

If the client use O'SHEA'S service or purchases products from O'SHEA'S in any way, the client will do so on the basis of the following terms and conditions. Please read them carefully. At the end of these terms and conditions, the client will be given the choice of accepting the terms and conditions by signing each page. If the client accept them, the client may use O'SHEA'S service, including to order a services and purchase O'SHEA'S products. If the client reject them, the client will not be able to use O'SHEA'S service or purchase products

**1. Definitions**

- 1.1. "O'SHEA'S" means O'Sheas Organisation Pty Ltd ACN 113 930 895, its administrators, agents, employees or assigns.
- 1.2. "Quotation" means the quotation attached to these terms. To the extent of any inconsistency between these terms and the Quotation, the Quotation prevails.
- 1.3. "Services" means the services specified in the Quotation and/or any other services agreed to in writing by O'SHEA'S and includes O'SHEA'S website, the interface, user system and the menu contained therein.
- 1.4. "Products" means the products specified in the Quotation and/or any other products used in the provision of Services agreed to in writing by O'SHEA'S and includes any and all O'SHEA'S branded products or third party products sold by O'SHEA'S to a Client or a third party.
- 1.5. "Client" means the person/entity that requests and/or receives the Services and or Products.
- 1.6. "Fee" means the fee(s) specified in the Quotation and/or otherwise agreed to by O'SHEA'S in writing, (including a fee based on hourly rates), for the Services.
- 1.7. "Contract" means the contract between O'SHEA'S and the Client for the provision of Services and Products, which among other things incorporates these terms.

**2. Effect**

- 2.1. These terms prevail over any terms issued by the Client, unless otherwise agreed by O'SHEA'S in writing. These terms may only be varied with the written consent of O'SHEA'S.

**3. O'SHEA'S Responsibilities and Obligations**

- 3.1. O'SHEA'S agrees to perform the Services required by the Client with due care, skill and diligence;
- 3.2. O'SHEA'S will endeavour to perform the Services in a timely manner, as agreed, and in accordance with the requirements of the Client, to the extent that it is within O'SHEA'S reasonable control to do so;
- 3.3. O'SHEA'S gives no warranty as to the efficacy or expediency of the Services.
- 3.4. O'SHEA'S agrees that:
  - 3.4.1. it has taken all reasonable care in the performance of the Services
  - 3.4.2. at all times the clients personal, billing and confidential information that is identifiable will be kept confidential. We will not disclose that information (in a way that makes the information identifiable) to anyone else without the client's consent.

**4 Client's Responsibilities and Obligations**

- 4.1 The Client agrees to;
  - 4.1.1 provide O'SHEA'S with all relevant information and documents relating to the Client's requirements;
  - 4.1.2 promptly and satisfactorily answer all reasonable enquiries and where possible, provide any information reasonably requested by O'SHEA'S;
  - 4.1.3 take all reasonable steps to avoid doing or omitting anything which may hinder/delay O'SHEA'S in performing the Services;
  - 4.1.4 advise O'SHEA'S in writing of any material fact that may affect the performance of the Services;
  - 4.1.5 take all reasonable steps to ensure clear access from hazards and risks to the premises to ensure that O'SHEA'S is able to perform the work pursuant and in accordance with Occupation Health and Safety legislation.
  - 4.1.6 pay for all fees and charges in connection with the performance of the Services and Products;
  - 4.1.7 discharge its obligations under the Contract reasonably and in good faith;
  - 4.1.8 acknowledge that the Services performed by O'SHEA'S are opinion based and O'SHEA'S give no warranty for the efficacy or expediency of the Services; and
  - 4.1.9 Accepts O'SHEA'S right to sub-contract the whole or any part of the Services.
  - 4.1.10 Be refrained from approaching any agent of O'SHEA'S directly for the purposes of engaging the services of the agent without O'SHEA'S prior written consent.

**5 Health and Safety**

- 5.1 O'SHEA'S is entitled to undertake a job safety analysis before the commencement of any work to assess the health and safety risk at the premises.
- 5.2 O'SHEA'S may, either before or during the provision of the Service, refuse or cease the provision of the Service where carrying out the Service presents, in the absolute discretion of O'SHEA'S, a risk to health and safety.
- 5.3 The client will not be refunded for any Service which, in the opinion of O'SHEA'S, cannot be completed due to health and safety risks arising from but not limited to the:-
  - 5.3.1 state or condition of the Client's premises,
  - 5.3.2 exposure or potential exposure to harmful chemicals, gasses or substances,
  - 5.3.3 suspected presence of asbestos, and
  - 5.3.4 unstable structures.

Signature:

Date:

## **6 No Warranty**

- 6.1 Except as provided here or required by mandatory operation of law, O'SHEA'S makes no warranty whether express or implied in relation to the performance of the Services.
- 6.2 O'SHEA'S gives no warranty for the efficacy or expediency of the Services. The Services represent the professional opinion of O'SHEA'S and accordingly, other suitably qualified/accredited professionals may differ in their opinion.
- 6.3 All information produced from the Services, (as contained in any report or other similar product), is based entirely upon the information provided by the Client. O'SHEA'S is not responsible for verifying that information. Accordingly O'SHEA'S gives no warranty in relation to the stated facts provided by the Client.
- 6.4 No warranty is given or implied that the Products are suitable for the purpose for which the Client requires. It is the responsibility of the Client to assess the suitability of the Products for their specific purposes.

## **7 We Are Not Responsible For Client Mistakes – The Client Indemnifies O'Shea's**

- 7.1 The Client agrees to indemnify O'SHEA'S in relation to any cost, loss, liability, or damage that any of the Client or a third party suffers as a result of the client use of O'SHEA'S Service:
  - 7.1.1 because the Services the Client orders is not suitable for its intended purpose or does not suit the relevant circumstances or is otherwise inaudible or unclear;
  - 7.1.2 If the Client fails to obtain formal advice from an independent advisor concerning whether the Services the Client choose is suitable for its intended purpose or is suitable for particular circumstances;
  - 7.1.3 because of the answers the Client provide to questions asked of the Client when using O'SHEA'S service;
  - 7.1.4 because the Client does not answer all questions completely and accurately;
  - 7.1.5 because the Client modifies the Services after they are provided to the Client; or
  - 7.1.6 because the Client breached these terms and conditions in some other way.

## **8 Payment of Fee and Expenses**

- 8.1 The Client must pay O'SHEA'S the Fee specified in the Contract for the performance of the Services plus related disbursements at the times specified in the Contract. If no fee or basis for calculating the Fee has been agreed, then O'SHEA'S shall be paid a reasonable fee, taking into consideration O'SHEA'S hourly rate as at the time the Services are performed.
- 8.2 The Client must pay invoices issued by O'SHEA'S for the Services performed, within thirty (30) days of receiving the said invoices, unless otherwise agreed in writing. O'SHEA'S may halt performance of the Services until payment of all outstanding invoices including interim accounts, has been received by O'SHEA'S in full.
- 8.3 O'SHEA'S may withhold any information, results or reports arising from the performance of the Services, until payment of the Fee has been received by O'SHEA'S.
- 8.4 The Fee is exclusive of Goods and Services Tax.
- 8.5 At any time, O'SHEA'S may require payment in

advance for any part (or all) of the Fee.

- 8.6 Should the Client default in payment of any monies due and owing pursuant to this executed agreement, then all such monies due to O'SHEA'S shall immediately become due and payable on demand by O'SHEA'S.
- 8.7 Unpaid monies owed by the Client after a demand has been made by O'SHEA'S will immediately incur interest in the amount of 5% of the total outstanding amount as at the day the demand was made with interest to be capitalised daily.
- 8.8 Where accounts remain unpaid for a period of 90 days, O'SHEA'S will commence legal proceedings for the recovery of monies owed by the Client plus any interest which may have accrued.
- 8.9 All costs associated with the legal action required to recover monies owed by the Client to O'SHEA'S will be sought from the Client and the Client hereby indemnifies O'SHEA'S on a Solicitor/Client basis for all reasonable legal costs incurred by O'SHEA'S in the recovery of monies.
- 8.10 Any expenses, costs or disbursements incurred by us in recovering any outstanding monies including debt collection, agency fees or solicitor's costs shall be paid by the Client. Providing that those fees do not exceed the scale charges by that debt collection agency/solicitor.

## **9 Third Party Equipment Hire**

- 9.1 At all times all equipment used by O'SHEA'S remains the property of O'SHEA'S.
- 9.2 O'SHEA'S may at any time, remove equipment from the premises however, where possible O'SHEA'S will make all reasonable attempts to advise the Client of the removal of equipment.
- 9.3 The client agrees to do anything and everything reasonably necessary to allow O'SHEA'S equipment to be collected if and when the Client is notified.
- 9.4 The Client may at any time request that O'SHEA'S remove any equipment from the premises.
- 9.5 The Client is responsible for the safekeeping and preservation of any and all of equipment kept at the premises by O'SHEA'S for the provision of the Service and accordingly, it is the Client's responsibility to have sufficient insurance to cover the value of O'SHEA'S equipment.
- 9.6 The Client will be liable for the damage or theft of equipment used in the provision of any Service where the damage or theft has resulted from the Client's negligence or lack of reasonable care.

## **10 Variations**

- 10.1 The Client may request a variation to the scope or timing of Services by notice in writing to O'SHEA'S. O'SHEA'S shall endeavour to comply with such request (any acceptance of the variation by O'SHEA'S must be made in writing) provided that the Fee shall be reasonably increased in respect of any variation resulting in increased costs to O'SHEA'S.
- 10.2 O'SHEA'S may request a variation to the scope or timing of the Services by notice in writing to the Client. Any such variation request shall be negotiated in good faith between the parties.

Signature:

Date:

## **11 Customer cancellation policy**

- 11.1 In order to cancel or seek a reschedule of an otherwise agreed to appointment, O'SHEA'S requires no less than 24 hours' notice of the cancellation.
- 11.2 If 24 hours notice is not provided to O'SHEA'S by the Client, a cancellation fee of \$90.00 will be charged for any rescheduled jobs or cancellations.
- 11.3 Reschedules and cancellations can only be made by telephone during normal business hours.
- 11.4 Reschedules and cancellations must NOT be conveyed to O'SHEA'S through email, fax, SMS or similar means.
- 11.5 Should a reschedule or cancellation be made through a means of communication mentioned above in 12.4, even where 24 hours notice is given, the cancellation fee of \$90.00 may be enforced.

## **12 Liability**

- 12.1 Where legislation implies any term, condition or warranty in the Contract, which cannot be excluded, restricted or modified; such term condition or warranty shall be deemed to be included in the Contract provided that O'SHEA'S liability for breach of such term condition or warranty is, at the option of O'SHEA'S, restricted to:
  - 12.1.1 the supply of part or all of the Services again; or
  - 12.1.2 the reasonable cost of supplying part or all of the Services again.
- 12.2 Without limiting the above provisions and subject to mandatory operation of law; under no circumstances will O'SHEA'S liability under the Contract exceed the Fee or \$6,000, whichever is the lesser amount.
- 12.3 Except where required by mandatory operation of law, O'SHEA'S shall not be liable to the Client for any personal injury, indirect, special or consequential loss or damage (including without limitation loss of profits, loss of opportunity or business interruption) suffered by the Client or any other person, howsoever arising.
- 12.4 O'SHEA'S shall not be liable to any person other than the Client in relation to the performance of the Services and the Client shall indemnify and keep indemnified O'SHEA'S in respect of any loss or damage suffered by any third party in relation to the performance of the Services, in accordance with these terms.
- 12.5 O'SHEA'S shall have no liability to the Client in respect of any claim by the Client or any other person arising out of or in relation to the Services unless the Client (or other person) notifies O'SHEA'S, of both their intention and relevant circumstances to claim, within 3 months of the completion of the Services, and if that time period is held by a Court of competent jurisdiction to be unreasonable then within 6 months of the completion of the Services and if that time period is held by a Court of competent jurisdiction to be unreasonable then within 12 months of the completion of the Services, irrespective of whether the claim arose within that time or not.
- 12.6 Clause 13.5 above, may be pleaded as an absolute bar to any legal proceedings against O'SHEA'S in relation to the Services, unless such legal proceedings are issued and Court documents served upon O'SHEA'S within such period.
- 12.7 Where at the sole opinion and discretion of O'SHEA'S, there is pre-existing damage to any floor, surface or

other property of the Client or third party, O'SHEA'S reserves the right to refuse to perform the Service to the Client until and unless the Client executes an additional "Pre-Existing Damage Waiver".

- 12.8 O'SHEA'S will be the sole determinant of what constitutes "Pre-Existing Damage" and no debate will be entered into.

## **13 Intellectual Property – O'SHEA'S Intellectual Property Is Not Diminished**

- 13.1 O'SHEA'S has copyright in all products supplied to the Client in performing the Services and the Client shall not use or deal with such documents, other than for the purpose that the Services are provided. If O'SHEA'S terminates the Contract by reason of breach of Contract by the Client, the Client shall immediately return all products to O'SHEA'S and shall cease to have any rights to use or otherwise deal with the products.
- 13.2 Unless otherwise agreed in writing by O'SHEA'S, all right title and interest in all inventions and/or discoveries made by O'SHEA'S in performing the Services shall be owned by O'SHEA'S and the Client shall have a non-exclusive free and continuous licence from O'SHEA'S to use the same, for the purpose that the Services are provided. If O'SHEA'S terminates the Contract by reason of breach of the Contract by the Client, such licence shall automatically cease.
- 13.3 O'SHEA'S remain the owner of all of it's interest in the intellectual property and know-how that resides in the Services.
- 13.4 The Client is licensed to use O'SHEA'S Service for the sole purpose of ordering Services; and
- 13.5 The Client receives no proprietary right whatsoever in relation to O'SHEA'S Service, and no ownership in the copyright of the Services ordered.

## **14 Recovering Revenue Lost Through Misuse Or Breach**

- 14.1 If O'SHEA'S discover that they have lost revenue through the Client's misuse of O'SHEA'S Service or the Client breach of these terms and conditions, then the Client agrees that O'SHEA'S may recover from the Client each of the following:
  - 14.2 the revenue O'SHEA'S have lost;
  - 14.3 O'SHEA'S costs of discovering O'SHEA'S loss and the extent of it;
  - 14.4 O'SHEA'S costs of recovering the revenue; and
  - 14.5 interest on any amount owing under this clause.
- 14.6 Also, if O'SHEA'S can show that we have lost revenue through the Client's misuse of O'SHEA'S system or breach of these terms and conditions, then the Client agrees that O'SHEA'S has the right to audit the Client's operations (at the Client's cost) to determine the extent of O'SHEA'S loss.

## **15 Samples**

- 15.1 All distributed sample products remain the sole property of O'SHEA'S.
- 15.2 Any distributed sample products must be returned to O'SHEA'S upon notice within a reasonable time but in any event, within seven (7) days of a written request being made for the return.
- 15.3 If sample products are not returned within a reasonable time, a reasonable price for the sample

Signature:

Date:

products retained by the Client may be charged to the Client.

- 15.4 Under NO circumstances shall ANY sample products be sold by a Client
- 15.5 Under NO circumstances shall ANY sample product be re-packaged, re-branded or altered by any third party.
- 15.6 Under NO circumstances shall the composition or makeup of any O'SHEA'S sample or other products be tested or investigated for the purpose of replicating the same or similar product

## **16 Confidentiality**

- 16.1 The parties agree that all information obtained from each other in relation to the Services, will be treated as confidential and shall not be disclosed to any third party (unless required by law) without prior written consent of the other party.

## **17 Events Beyond the Control of O'SHEA'S**

- 17.1 If O'SHEA'S's performance of the Services is delayed due to an act, omission or event beyond their reasonable control, O'SHEA'S will be entitled to a reasonable extension of time for the performance of the Services.
- 17.2 If O'SHEA'S is unable to complete performance of the Services due to an act, omission or event beyond their reasonable control, O'SHEA'S may terminate the Contract.

## **18 Refunds, Returns and Exchanges**

- 18.1 The Client agrees that because of the nature of O'SHEA'S Products and Services, O'SHEA'S are most unlikely to allow any refunds, returns, or exchanges and that O'SHEA'S provide refunds at O'SHEA'S absolute discretion, in exceptional circumstances.
- 18.2 O'SHEA'S may reject any request for a refund, return or exchange if they are not afforded a right to inspect any alleged damage or inferior Service.
- 18.3 The Client agrees that to apply for a refund, a return, or an exchange, the client must write to O'SHEA'S setting out:
  - 18.3.1 the intended purpose to which the Services were to be applied;
  - 18.3.2 the identity and contact details of the person for whom the Client purchased the product (we may contact that person to discuss, and request copies of, the Services the Client have provided to them);
  - 18.3.3 the reasons that the Client wants a return, a refund, or an exchange;
  - 18.3.4 copies of the products or services the Client has provided to that person in place of O'SHEA'S Product or Services in relation to which the Client now seeks a refund, a return, or an exchange; and
  - 18.3.5 any other information or materials O'SHEA'S ask for that O'SHEA'S believe is relevant to O'SHEA'S decision.

## **19 Termination**

- 19.1 O'SHEA'S may by written notice immediately terminate the Contract if:
  - 19.1.1 the Client is in breach of any terms of the Contract; and

- 19.1.2 O'SHEA'S has served the Client with a written notice specifying the breach and requiring its remedy; and

- 19.1.3 the breach is not remedied within fourteen (14) days of the said notice unless the notice specifies a shorter timeframe and in such circumstances that shorter timeframe shall apply..

- 19.2 Without limiting the foregoing, if the Contract is lawfully determined or terminated for any reason then the Contract shall be deemed to be void *ab initio*.

## **20 Dispute Resolution**

- 20.1 Any dispute or difference whatsoever arising out of or in connection with the Contract shall be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Expedited Commercial Arbitration Rules.
- 20.2 Any dispute or difference in which the quantum is less than \$25,000 arbitration shall take place using the submission of documents alone unless both parties agree otherwise.

## **21 Severability/Renegotiation**

- 21.1 If any provision of this contract or its application to any party, person, corporation, association or circumstances is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatsoever then:
  - 21.1.1 that provision is severed from this Contract or its application must be read down so as not to apply to that party, person, corporation, association or circumstance;
  - 21.1.2 the remainder of this Contract or the application of that provision to any other party, person, corporation, association, or circumstance shall not be affected; and
  - 21.1.3 to the extent permissible by law, the parties must act in good faith to reach agreement as to a replacement valid and enforceable provision (and any necessary consequential amendments to the Contract) which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable provision was intended to achieve **PROVIDED THAT** in so doing the parties must preserve the basic purpose and intent of this Contract.

## **22 Miscellaneous**

- 22.1 Quotations are valid for acceptance within 30 days from the date they bear and will lapse if not accepted within such period, unless otherwise agreed by O'SHEA'S in writing.
- 22.2 If O'SHEA'S start the Services before all parties agreed to the terms of the Contract, then the Contract shall apply retrospectively from when the Services started.
- 22.3 The Contract is made in and shall be subject to the laws of the State of South Australia.
- 22.4 The parties to the Contract irrevocably and unconditionally submit exclusively for all purposes of, in relation to or in any way in connection with or arising out of the Contract to the jurisdiction of the Courts of South Australia.
- 22.5 Any and all actions that may be brought by the parties to the Contract in relation to or in any way in connection with or arising out of the Contract shall be brought in Courts located in the State of South Australia.

Signature:

Date:

Signature:

Date: