

Terms and Conditions of Purchase

These Terms and Conditions of Purchase apply to Purchase Orders issued by Sea Swift Pty Ltd.



Version 2.0 published 7 November 2023

1 Agreement

- 1.1 You must supply the Goods and / or Services in accordance with this Agreement.
- 1.2 This Agreement comprises:
 - a) the Order, referring to these Terms and Conditions of Purchase;
 - b) these Terms and Conditions of Purchase; and
 - c) any other document that the Order expressly states is to apply to the supply of the Goods and / or Services (**Scope Document**).
- 1.3 If there is any inconsistency between the documents comprising this Agreement, the following order of precedence applies with a document higher in the list taken precedence over each lower document to the extent of the inconsistency:
 - a) any Additional Instructions;
 - b) the Order;
 - c) these Terms and Conditions of Purchase; and
 - d) any Scope Document.
- 1.4 The Agreement supersedes all other arrangements or agreements between Us and You in relation to the Goods and / or Services and is the entire agreement between the parties. This Agreement applies to the supply of the Goods and / or Services to the exclusion of any other conditions, including any contained in Your quote, invoice, order acknowledgement, delivery docket, invoice or other document, unless We otherwise agree in writing referring to this **clause 1.4**.
- 1.5 This Agreement becomes binding on You on the earlier of:
 - a) the date that You communicate acceptance of the Order;
 - b) the date We pay You, in accordance with this Agreement, any deposit or advance payment with respect to the Goods and / or Services; and
 - c) the date that You start supplying any of the Goods and / or Services.

2 Our Related Bodies Corporate

You acknowledge and agree that We may be purchasing the Goods and / or Services for the use or benefit of one of Our Related Bodies Corporate (**End User**). Consequently, in determining the amount of any claims, loss or damage recoverable by Us under or in connection with this Agreement or otherwise in relation to any fact, matter or circumstance, such amount must include any claims, loss or damage of the End User in connection with that fact, matter or circumstance. We will inform You of any End User at the time We issue the Order.

3 Supply of Goods and / or Services

- 3.1 You must supply the Goods to Us at the Delivery Location on the Date for Delivery. The Date for Delivery is of the essence in this Agreement. We are not required to accept early or late delivery, provided that:
 - a) in the case of early delivery, We notify you of such non-acceptance in accordance with **clause 5.2**; and
 - b) in the case of late delivery, We have given You prior notice stating that You are in breach of this **clause 3.1** and requiring You to deliver the Goods within a reasonable period and that period has expired.

- 3.2 Unless specified otherwise in the Order, delivery of Goods includes all packing, loading, transport, unloading, unpacking, installing, commissioning and testing.
 - 3.3 You must supply to Us and complete the Services by the Date for Delivery.
 - 3.4 You must immediately inform Us if you become aware that You will not be able to deliver the Goods on the Date for Delivery or supply and complete the Services by the Date for Delivery.
 - 3.5 At all times while you are supplying the Goods and / or Services, you must comply with all Legislation.
 - 3.6 You must ensure that:
 - a) the Goods and / or Services comply with this Agreement;
 - b) at delivery the Goods will be new (unless stated otherwise in this Agreement) and in good order and condition;
 - c) You supply the Goods and / or Services in accordance with Good Industry Practice;
 - d) except to the extent necessary to comply with this Agreement, You and Your Personnel do not damage or destroy Our property or the property of Our Personnel;
 - e) You supply the Goods and / or Services in a way that ensures:
 - i. no contaminants are discharged on or from the Delivery Location; and
 - ii. no pollution occurs,in contravention of any Legislation;
 - f) at delivery, the Goods and / or Services comply with all Legislation and Australian Standards; and
 - g) if You gave us a demonstration of, or sample of, the Goods before We entered into this Agreement, the Goods correspond in nature and quality with any Goods demonstrated and any sample provided.
 - 3.7 Goods must be free of pests at the time of delivery. If We require, You must at or before the time of delivery, provide Us with certification that the Goods to be supplied have been inspected and are free of pests.
 - 3.8 Without limiting Our liability to You for the wrongful acts or omissions of Us or our Personnel, to the extent permitted by Legislation, You and Your Personnel each enter onto and use the Delivery Location at their own risk.
 - 3.9 While at the Delivery Location or any other site owned or controlled by Us or Our Related Body Corporate You must comply with all our health, safety and environment policies and procedures in force at that site and comply with all Our directions concerning health, safety or the environment at that site.
- ## 4 Packaging
- Goods are to be packaged as specified in the Order. If nothing is specified in the Order, they are to be packaged in accordance with Good Industry Practice.
- ## 5 Acceptance
- 5.1 The supply of the Goods and / or Services is not complete until We have accepted them.
 - 5.2 Without limiting **clause 12**, within a reasonable time after delivery, We will either:

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- a) accept or (if they do not comply with this Agreement) reject the Goods and /or Services; and
 - b) give You evidence of that acceptance or rejection.
- 5.3 If we reject any Goods and / or Services, You must:
- a) within the time We specify (acting reasonably), remove those Goods and / or Deliverables; and
 - b) repay to Us the Price that We paid for those Goods and / or Services.
- 5.4 Our acceptance of the Goods and / or Services entitles You to issue an invoice pursuant to **clause 7** and is not a waiver of any rights or a representation or admission that the Goods and / or Services have been supplied in accordance with this Agreement.

6 Provision of documents

- 6.1 You must provide us with the manufacturer's warranties specified in the Order. If no manufacturer's warranties are specified in the Order, You must provide us with the manufacturer's warranties as required or appropriate having regard to Good Industry Practice.
- 6.2 The warranties You provide pursuant to **clause 6.1** must be in Our name or the name of Our nominee.
- 6.3 You must provide all operations manuals specified in the Order. If no operations manuals are specified in the Order, You must provide us the operations manuals as required or appropriate having regard to Good Industry Practice.
- 6.4 You must provide us with the certification, manufacture data reports and material safety data sheets and other technical or verification information that are specified in the Order. If no such technical or verification information is specified in the Order, You must provide us with technical or verification information as required or appropriate having regard to Good Industry Practice.
- 6.5 Unless We agree otherwise, You must comply with **clause 6.1**, **clause 6.3** and **clause 6.4** as a pre-condition to our acceptance of the Goods and / or Services.

7 Price and Payment

- 7.1 You must supply the Goods and / or Services for the Price. Unless specified in the Order, the Price is fixed and not subject to rise and fall or other adjustment.
- 7.2 Unless a different time is specified in the Order, you may only submit a Tax Invoice for Goods and / or Services supplied after We have accepted them pursuant to **clause 5**.
- 7.3 A Tax Invoice issued pursuant to **clause 7.2** must:
- a) be correctly addressed;
 - b) identify Our Order number; and
 - c) where we request it, be accompanied by documentation substantiating the Price.
- 7.4 Unless specified in the Order, the Price is deemed to be fully inclusive of all delivery, taxes, insurance, certification, packaging and transport costs.
- 7.5 If We dispute the amount payable in a Tax Invoice issued pursuant to this **clause 7.2**, We will pay the undisputed part of the Tax Invoice and either party may commence Dispute resolution proceedings pursuant to **clause 20** in respect of the unpaid part.

- 7.6 We may deduct from any amount that We owe You under this Agreement, any amount that You owe to Us under this Agreement.
- 7.7 Payment of a Tax Invoice is not a waiver of any rights or a representation or admission that the Goods and / or Services comply with this Agreement.

- 7.8 Unless a different time for payment is specified in the Order, We will pay all correctly rendered and undisputed Tax Invoices within 30 days after the end of the month in which the Tax Invoice is issued.

8 Intellectual Property

- 8.1 We remain the owner of Our Background IP. We grant to You a non-exclusive, non-transferrable, sublicensable (in accordance with **clause 8.2**), royalty-free, revocable licence (or if the IP is licensed to Us, a sublicense) to use Our Background IP for the sole purpose of supplying the Goods and / or Services.
- 8.2 You may sublicense the licence granted pursuant to **clause 8.1** to Your permitted subcontractors to the extent strictly necessary for the supply of the Goods and / or Services.
- 8.3 You remain the owner of Your Background IP. You grant to Us and Our Personnel a non-exclusive, transferrable, royalty-free, irrevocable, sublicensable and perpetual licence (or if the IP is licensed to You, a sublicense) to use, adapt, modify or copy all Your Background IP to the extent necessary to enjoy the full benefit of the Goods, Services, Deliverables and Agreement IP.
- 8.4 You agree that all Agreement IP will be vested in Us and will be Our property as and when created and You transfer all rights, title and interest in the Agreement IP to Us.
- 8.5 You must not disclose, reproduce or otherwise deal with the Agreement IP or Our Background IP, or permit anyone else to do so, for any purpose other than supplying the Goods and / or Services.
- 8.6 You must obtain all consents from the individual creator to ensure that We can exercise all Our rights under this **clause 8** without infringing any Moral Rights.
- 8.7 You warrant that:
- a) You own, or license on terms that enable it to comply with this Agreement, all IP in Your Background IP; and
 - b) the:
 - i. supply and use of the Goods and/or Services and/or the Deliverables;
 - ii. Agreement IP and its use, adaptation, modification or copying for its intended purpose; and
 - iii. the exercise by Us or Our Personnel of any rights pursuant to the licence granted under **clause 8.3**,will not infringe any person's rights in relation to IP, within or outside of Australia.
- 8.8 We warrant that:
- a) We own, or license on terms that enable it to comply with this Agreement, all IP in Our Background IP; and
 - b) the exercise by You or Your Personnel of any rights pursuant to the licence granted under **clause 8.1**,

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will not infringe any person's rights in relation to IP, within or outside of Australia.

9 Confidentiality

- 9.1 Each party must keep confidential, and not use or disclose, any of the other party's Confidential Information, except (subject to **clause 10**):
- to the extent necessary for the performance of their obligations under this Agreement;
 - that a party may disclose Confidential Information to its legal and other advisers;
 - to the extent necessary to resolve any genuine Dispute; and
 - that a party may disclose Confidential Information if required by any Legislation (including any order of a court of competent jurisdiction) or the rules of any stock exchange.

- 9.2 Each Party must ensure that any of its Personnel who receive Confidential Information do not disclose that Confidential Information and each party is liable for breaches of confidentiality by its Personnel.

10 Privacy

Each party warrants that it will comply with all Legislation relating to the Processing of Personal Data collected by, or disclosed to, it pursuant to this Agreement.

11 Insurance

- 11.1 Each party must effect and maintain all insurance policies required by Legislation.
- 11.2 During any period You are providing Goods and / or Services, You must have insurance policies in place:
- covering risks;
 - with an insurer;
 - on terms; and
 - with limits of cover,
- in each case, consistent with the application of Good Industry Practice.
- 11.3 If We request, You must promptly make and pursue a claim under Your insurance policies where:
- liability, loss or damage has occurred and is covered under any of Your insurance policies (**Loss or Damage**);
 - there are reasonable prospects of the claim succeeding; and
 - some or all of the proceeds from a successful claim could be applied towards any Loss or Damage,
- however, this clause does not apply in circumstances where You have paid for the Loss or Damage on Your own account.

12 Defects Liability Period

- 12.1 You warrant the Goods and / or Services will be free of Defects during the Defects Liability Period except to the extent that the Defect is due solely to:
- fair wear and tear;
 - any act or omission of anyone other than You or Your Personnel (except for any act or omission of Us or Our Personnel in the proper use and maintenance of the Goods, Services and / or Deliverables);
 - accidental loss or damage caused by anything or anyone other than You or Your Personnel.

- 12.2 If, during the Defect Liability Period, We discover a Defect in the Goods or Deliverables, You must at Your cost and within the time We specify (acting reasonably):

- in respect of Goods or Deliverables (as We direct):
 - remove some or all of the Goods or Deliverables, rectify the Defects in them and return them to Us;
 - replace some or all of the Goods or Deliverables; or
 - remove some or all of the Goods or Deliverables and repay to Us the Price that We paid for those Goods or Deliverables; and
- in respect of Services (as We direct):
 - rectify some or all of the Services;
 - resupply some or all of the Services; or
 - or repay to Us that Price that We paid for the Defective Services.

- 12.3 Where You repair, replace, rectify or resupply any Goods and / or Services pursuant to this Agreement, You are responsible for all costs incurred in doing so, including all removal and transportation costs of the Goods from and to the Delivery Location, labour costs and the costs of replacing or providing new parts for the Goods and / or Services.

- 12.4 If You fail to repair or replace any Goods and / or Services as required by this Agreement, We may carry out or have carried out any replacement or repair, in which case all costs We reasonably incur in doing so will be a debt due and immediately payable by You to Us.

- 12.5 Neither Our rights nor Your liabilities in respect of Defects (whether before or after the expiration of the Defects Liability Period) will be relieved or limited by the rights conferred on Us by this **clause 12** or Our failure to exercise such rights.

13 Termination

- 13.1 We may terminate this Agreement at any time for any reason by giving You at least 30 days' written notice. Following termination pursuant to this **clause 13.1**, Our only obligation (and sole liability resulting from such termination) is to pay You for:
- the Goods and/or Services which have been supplied in accordance with this Agreement prior to the date of termination (and not included in any other payment to You);
 - the costs of goods and materials:
 - reasonably ordered for the supply of the Goods and/or Services;
 - for which You are bound to pay;
 - that You cannot otherwise utilise in the ordinary course of its business;
 - the cost of which is not included in the amount payable pursuant to **clause 13.1(a)**; and
 - upon payment, free and clear title to the goods and materials will vest in Us.
- 13.2 If We or You suffer an Insolvency Event, subject to Chapter 5 of the *Corporations Act 2001* (Cth), the other party may terminate this Agreement with immediate effect by notice.

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13.3 If You are in breach of any of Your obligations under this Agreement and We have given You a notice specifying the obligation and requiring You to rectify the breach with a reasonable period and, within that period, You have not rectified the breach to Our satisfaction (acting reasonably), We may terminate this Agreement with immediate effect by notice to You.

13.4 You may terminate this Agreement:

- a) if We are in breach of Our obligations under **clause 8** or **clause 9** and You have given Us a notice specifying the obligation and requiring Us to rectify the breach within a reasonable period; or
- b) with immediate effect by notice to Us if We have not paid an amount due and payable pursuant to **clause 7** for a period of 14 days or longer after the amount became due and payable and then You have given Us a notice specifying the late payment and requiring Us to pay it within 14 days ,

and in each case, within the relevant notice period, We have not rectified the breach or made the payment to Your satisfaction (acting reasonably).

14 Indemnity and Limit of Liability

14.1 You indemnify Us from and against any cost, loss, claim, damage or liability that We suffer or incur arising out of the personal injury or death of any person to the extent caused by You or Your Personnel.

14.2 We indemnify You from and against any cost, loss, claim, damage or liability that You suffer or incur arising out of the personal injury or death of any person to the extent caused by Us or Our Personnel.

14.3 Subject to **clause 14.4** but notwithstanding any other provision of this Agreement, neither party is liable to the other on any basis (including negligence) for any Consequential Loss.

14.4 **Clause 14.3** does not apply to relieve or limit:

- a) Your liability to Us pursuant to the indemnity in **clause 14.1**;
- b) Our liability to You pursuant to the indemnity in **clause 14.2**; or
- c) Our liability to pay You any part of the Price.

15 Title and Risk

15.1 Property and title in Goods and Deliverables passes to Us on the first to occur of payment of the whole of the Price for the Goods or Deliverables and acceptance of the Goods or Deliverables in accordance with this Agreement.

15.2 Risk in the Goods and Deliverables passes to Us on acceptance of those Goods or Deliverables in accordance with this Agreement.

15.3 You warrant that title in the Goods and Deliverables passes to Us free from all charges, liens and encumbrances.

16 PPSA

16.1 If We pay any part of the Price (including any deposit) prior to the date that We accept the Goods pursuant to **clause 5**, You charge the Goods as security for performance of the obligations owed or which may be owed by You to Us under or in respect of this Agreement up to the amount of the part payment, including any obligation to repay any part of the Price that we paid for

Goods and / or Services and that you must repay pursuant to this Agreement. You agree that Agreement creates a security interest, in favour of Us, in the Goods to secure supply of the Goods by You to Us.

16.2 If **clause 16.1** applies, You must not grant any other person a subsequent security interest in the Goods and must not part with possession of the Goods, in whole or in part, except by delivery to, or at the direction of, Us.

16.3 You must:

- a) promptly do all things, sign any further documents and provide any information which We may reasonably require to enable Us to perfect and maintain the perfection of any security interest over the Goods (including by registration of a financing statement or financing change statement); and
- b) give Us not less than 14 days prior written notice of any proposed change in Your business name or any other change in your details (including without limitation changes to your trading name or business address).

16.4 You waive the right to receive notice of any registration events to which section 157(3)(a) of the PPSA applies.

16.5 You agree that sections 95, 96, 126, 130, 132(4), 135, 142 and 143 of the PPSA do not apply to this Agreement.

16.6 This **clause 16** does not exclude the operation of any equitable lien over any Goods or other property which may arise in Our favour.

16.7 Words used in this **clause 16** and defined in the PPSA have the meaning given to them in the PPSA.

17 Assignment and subcontracting

17.1 Subject to **clause 17.2**, the parties must not assign this Agreement without the other party's prior written consent (which must not be unreasonably withheld) and any purported assignment in breach of this **clause 17.1** is of no effect.

17.2 We can assign this Agreement without Your consent to:

- a) any of Our Related Bodies Corporate; or
- b) to any third party,

in each case, provided it has the financial and technical ability to fulfil Our obligations under this Agreement.

17.3 You must not subcontract any part of the supply of the Goods and / or Services without our prior written consent (which We will not unreasonably withhold).

17.4 Subcontracting any part of the supply of the Goods and / or Services does not relieve You from any of Your obligations or liabilities under this Agreement.

17.5 The acts and omissions of each subcontractor that you appoint to perform any part of the supply of the Goods and / or Services are deemed to be Your acts and omissions.

18 GST

To the extent that a supply made under this Agreement is a Taxable Supply, You may recover from Us (provided you have first provided Us with a Tax Invoice), in addition to the Price, an amount equal to the GST payable in respect of that supply.

19 Force Majeure

19.1 Provided it has complied with **clause 19.2**, neither party will be in breach of this Agreement nor liable for delay in

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performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events or circumstances caused by a Force Majeure Event. In such circumstances the affected party will be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 30 days or more, the party not affected by the Force Majeure Event may terminate this Agreement by giving written notice to the affected party (provided that a party may not terminate this Agreement under this **clause 19.1** if the affected party has recommenced performance of the affected obligation in full).

- 19.2 If a party's performance of this Agreement is affected by a Force Majeure Event:
- it must, as soon as possible, give the other party a notice describing the Force Majeure Event and its effects, including the anticipated period for which it will be prevented from performing any of its obligations under this Agreement; and
 - it must use all reasonable endeavours to overcome the Force Majeure Event and recommence performance of its affected obligations as soon as possible; and
 - it must keep the other party informed of the status of the Force Majeure Event and the steps it is taking to overcome it.

19.3 The performance of the affected obligations must be resumed as soon as practicable after a Force Majeure Event is removed or has ceased.

20 Disputes and Mediation

- 20.1 In the event of a Dispute between the parties, it must, in the first instance, be referred to appropriate managerial personnel within each party's business. If the parties are unable to resolve the Dispute within 5 business days of referral, each party agrees that the Dispute must be referred for mediation, at the request of either party, to a mediator agreed on by the parties. If the parties cannot agree on the identity of the mediator and the terms of their appointment within 10 business day of referral either party may ask the Resolution Institute to appoint the mediator and determine the terms of their appointment.
- 20.2 Each party must bear its own costs of complying with this **clause 20** and the parties must bear equally the costs of any mediator engaged.
- 20.3 If, within 21 days of the appointment of the mediator under **clause 20.1**, the Dispute has not been resolved, either party may terminate the mediation by giving written notice of termination to the other party and the mediator.
- 20.4 A party must not commence litigation unless it has complied with its obligations in **clause 20.1**, however nothing in this **clause 20** prevents a party from commencing proceedings seeking urgent injunctive or interlocutory relief.

21 Notices

- 21.1 Any notice given under or in connection with this Agreement:
- must be in writing;

- must be addressed to the relevant address set out in the Order or that was last communicated in writing to the person giving the notice;
- in the case of a notice to You, may be addressed to your principal place of business or registered office;
- must be posted by pre-paid mail, delivered by hand or emailed to the relevant email address with the notice attached in PDF format; and
- shall be deemed to have been given and received:
 - (in the case of post) 5 business days after posting;
 - (in the case of delivery by hand) on delivery; and
 - (in the case of email) when the email is delivered to the server of the recipient party,but if a notice is taken to be received on a day that is not a business day or after 5:00pm in that place, it is taken to be received at 9:00am on the next business day in the place of receipt.

22 Business Integrity

- 22.1 Each party must not, and must procure that its Personnel and any other person acting for or on its behalf, does not:
- give anything of value (which is not properly due) to the other party or its Personnel that is contrary to fair dealing; or
 - provide or offer a benefit (which is not properly due) to a public official (within or outside Australia) in order to retain or obtain an improper advantage.
- 22.2 You must:
- comply with all Legislation in relation to Modern Slavery;
 - take reasonable steps to ensure there is no Modern Slavery in Your supply chains; and
 - notify Us as soon as You become aware of any actual or suspected Modern Slavery in any supply chain that has a connection with this Agreement.
- 22.3 Each party must implement processes and procedures designed to ensure compliance with this **clause 22**.
- 22.4 You must maintain records in a reasonable level of detail concerning the steps You have taken in compliance with **clause 22** and, upon Our request, make these records available to Us together with such other information as We request in order Us to assess Your compliance with this **clause 22** and in order for Us to comply with any Legislation.
- 22.5 If required by Us, from time to time, You must procure that You (if You are a natural person) or one of your directors (if You are not a natural person) signs a statutory declaration confirming compliance with this **clause 22**.
- 22.6 You warrant that Your directors and employees have not and will not undertake any obligation which may interfere or conflict with the proper performance of the Your obligations under this Agreement.

23 Governing Law

This Agreement is governed by the laws of the State or Territory in which the Delivery Location is situated and the parties submit to the non-exclusive jurisdiction of the courts in that State or Territory and the courts which

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have jurisdiction to hear appeals from any of those courts.

24 Miscellaneous

- 24.1 This Agreement can only be amended by written agreement signed by the parties.
- 24.2 You are liable for the acts and omissions of Your Personnel performing works or services in connection with the supply of the Goods and / or Services as if such acts and omissions were Your acts and omissions.
- 24.3 You are an independent contractor and nothing in this Agreement creates any agency, joint venture, partnership or employer and employee relationship between the parties.
- 24.4 A delay or failure by a party to exercise a right under this Agreement is not a waiver of that right or any other right. No waiver by a party of a breach of this Agreement by the other party constitutes a waiver of any subsequent or continuing breach by that party.
- 24.5 No test, review (or failure to review), approval, statement of satisfaction or comment by or on Our behalf with respect to the Goods and/or Services waives or varies any of Your obligations under this Agreement.
- 24.6 Each party's remedies under this Agreement are without prejudice to any other remedies under this Agreement or any remedies available under any applicable law.
- 24.7 This Agreement is not to be construed to the disadvantage of a party because that party was responsible for its preparation.
- 24.8 If a provision of this Agreement is invalid, illegal or unenforceable for any reason, whether wholly or in part, the validity, legality and enforceability of the remaining provisions of this Agreement are, to the greatest extent possible, not be affected in any way.

25 Definitions and Interpretation

25.1 In this Agreement:

Additional Instructions means the additional instructions and / or special conditions, if any, set out in or referred to in the Order.

Agreement has the meaning given in **clause 1.2**.

Agreement IP means IP created, discovered or coming into existence as a result of performing this Agreement but does not include Your Background IP.

Confidential Information means the terms of this Agreement and all information exchanged between the parties in connection with this Agreement (including all Personal Data but excluding information that is or becomes public knowledge other than as a result of a breach of this Agreement).

Consequential Loss means:

- a) loss of revenue;
- b) loss of profit or anticipated profit;
- c) loss of business opportunity;
- d) loss of contract;
- e) loss of goodwill; and
- f) business interruption.

Date for Delivery means the date set out in the Order or, if none, a reasonable time after the Date of this Agreement.

Date of this Agreement means the date on which this Agreement became binding on You pursuant to **clause 1.5**.

Defect means:

- a) in respect of Services, any aspect of the Services that is not in accordance with this Agreement (including any omission); and
- b) in respect of Goods or Deliverables, any defect, fault, error or omission or any aspect of the Goods or Deliverables that is not in accordance with this Agreement.

Defects Liability Period means the period of 12 months commencing on the date We accept the Goods, Services or Deliverables (as applicable) pursuant to **clause 5**.

Deliverables means all reports, plans, drawings, designs, documentation, operations manuals, software, models or other information (whether recorded in writing or electronically) prepared by You and to be delivered to Us as part of the Services.

Delivery Location means the place for delivery place set out in the Order or, if none, the location that We nominate (acting reasonably).

Dispute means any dispute or difference between the parties under or in connection with this Agreement.

Force Majeure Event means any event or circumstance that could not have been protected against, prevented or overcome if the affected party had acted in accordance with Good Industry Practice and includes (provided it complies with the preceding criteria):

- a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- d) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority;
- e) industrial action not specific to the affected party; or
- f) epidemic or pandemic.

Good Industry Practice means:

- a) for the purposes of the definition of Force Majeure Event, performance and conduct as would ordinarily be expected of a supplier or purchaser (as applicable) that exercises the degree of skill, quality, care, diligence and prudence that would reasonably be expected of a competent and experienced supplier or purchaser (as applicable) in undertaking work, tasks, services, functions, responsibilities and obligations the same as or similar to Ours or Yours (as applicable) under this Agreement; and

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- b) in all other cases, in respect of You, performance and conduct as would ordinarily be expected of a contractor that exercises the degree of skill, quality, care, diligence and prudence that would reasonable be expected of a competent and experienced supplier in undertaking the work, tasks, services, functions, responsibilities and obligations the same or similar as the supply of the Goods and / or Services.

Goods means the goods, if any, identified in the Order and includes:

- a) all applicable manuals and operating instructions; and
b) all things necessary or incidental to the Goods and the performance by You of Your obligations under this Agreement so far as those obligations relate to the Goods.

GST has the meaning given in the GST Act.

GST Act means the *A New Tax System (Goods & Services Tax) Act 1999*.

Insolvency Event means the occurrence of any one or more of the following events regarding any party to this Agreement:

- a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;
b) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed regarding all or any material asset of the party;
c) a security holder, mortgagee or chargee has exercised, attempted to exercise or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or chargor; or
d) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it.

IP means all intellectual and industrial property rights, including trademarks, copyright, inventions, patents, designs, circuits and other eligible layouts, database rights and other intellectual property rights.

Legislation means Commonwealth, State and Territory government legislation, including statutes, ordinances, instruments, requirements, regulations, by-laws, directions, orders and proclamations and other subordinate legislation, in each case applicable to You, the supply of the Goods and / or Services and / or this Agreement.

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth).

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Order means the purchase order containing the description of the Goods and / or Services and referring to these Terms and Conditions of Purchase.

Our Background IP means any IP owned by or licensed to Us (including any licence granted by Our Related Body

Corporate) and which is provided to You by Us or on Our behalf for the purposes of this Agreement.

Our Contractor means any contractor of any tier that We engage or Our Related Body Corporate engages (excluding You and Your Personnel).

Our Personnel means:

- a) Our Related Bodies Corporate, Our Contractors and Our employees, officers and agents; and
b) all Related Bodies Corporate, employees, officers and agents of Our Related Bodies Corporate, Our Contractors and agents.

Personal Data means any information relating to an identified or identifiable natural person.

Personnel means Our Personnel and / or Your Personnel as applicable.

Processing means any operation or set of operations performed on Personal Data, including collection, recording, use, disclosure, transfer, access, storage, hosting, alteration, erasure or destruction.

PPSA means the *Personal Properties Security Act 2009* (Cth).

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Resolution Institute means the Resolution Institute of Australia (ACN 008 651 232) of Level 6, Tower B, Zenith Centre, 821-843 Pacific Highway, Chatswood, New South Wales or its successor.

Services means the services, if any, identified in the Order and includes:

- a) the preparation and delivery of the Deliverables; and
b) all things necessary or incidental to the Services and the performance by You of Your obligations under this Agreement so far as those obligations relate to the Services.

Taxable Supply has the meaning given in the GST Act.

We, Us or Our means Sea Swift Pty Ltd ABN 16 001 889 040.

You or Your means the supplier of the Goods and / or Services set out in the Order.

Your Background IP means any IP owned by or licensed to You (including any licence granted by Your Related Body Corporate) and which:

- a) was in existence at the Date of this Agreement;
b) came into existence after the Date of this Agreement, other than in connection with the supply of the Goods and/or Services or this Agreement; or
c) has been developed by You for general use in Your business and not specifically developed for the purpose of supplying the Goods and/or Services.

Your Contractors means a subcontractor of any tier that You or another one of Your Contractors engages to perform part of the supply of the Goods and / or Services.

Your Personnel means:

- a) Your Related Bodies Corporate, Your Contractors and Your employees, officers and agents; and

Terms and Conditions of Purchase

These Terms and Conditions of Purchase apply to Purchase Orders issued by Sea Swift Pty Ltd.



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- b) all Related Bodies Corporate, employees, officers and agents of Your Related Bodies Corporate, Your Contractors and agents.
- 25.2 The words 'including' and 'includes' and any variants of those words will be read as if followed by the words 'without limitation'.
- 25.3 Words in the singular include the plural and vice versa.
- 25.4 Unless expressly stated in this Agreement, a reference to:
 - a) a day is to a calendar day where the Delivery Location is situated;
 - b) a business day is to a business day where the Delivery Location (except in the case of **clause 21**, in which case it is a business day in the place of receipt) and
 - c) to time is to time where the Delivery Location is situated.
- 25.5 Any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.
- 25.6 Where any word or phrase given a defined meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning.
- 25.7 An obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.
- 25.8 An obligation or liability assumed by, or a right conferred on, two or more persons bind or benefits them jointly and severally.