



**Terms and Conditions of
NODEIFY PTY LTD (“the Supplier”)
ABN 38 656 887 311**

1. Application

- 1.1 These Terms and Conditions (“T&Cs”), and no terms and conditions of the Customer, will apply to any supply of Goods and/or Services by the Supplier to the Customer.

2. Definitions

In these T&Cs:

- 2.1 “Claim” means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;
- 2.2 “Confidential Information” means information, whether in visual, oral, documentary, electronic machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;
- 2.3 “Contract” means a contract formed as a result of the acceptance of an Order by the Supplier;
- 2.4 “Control” has the meaning set out in the Corporations Act 2001 (Cth);
- 2.5 “Customer” means the customer set out in any quotation, offer or other document provided by the Supplier (or, in the absence of such information, the customer who placed the Order);
- 2.6 “Delivery Address” means any delive@nishry address in a Contract;
- 2.7 “Delivery Date” means any delivery date in a Contract;
- 2.8 “Goods” means the goods in a Contract;
- 2.9 “Insolvency Event” means any of the following, or any analogous, events:
- (a) the Customer disposes of the whole or any part of the Customer’s assets, operations or business other than in the ordinary course of business;
 - (b) the Customer ceases, or threatens to cease, carrying on business;
 - (c) the Customer is unable to pay the Customer’s debt as the debts fall due;
 - (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Customer’s assets, operations or business;
 - (e) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer’s creditors or any class of the Customer’s creditors; or
 - (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer’s assets, operations or business;
- 2.10 “Intellectual Property Rights” means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trademarks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;
- 2.11 “Liability” means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);
- 2.12 “Order” means any written or verbal order by the Customer to the Supplier for Goods and/or Services;
- 2.13 “Personnel” means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;
- 2.14 “Price” means the price of the Goods and/or Services (including but not limited to any delivery or other changes);
- 2.15 PPSA means the Personal Property Security Act 2009 (C’wth) as amended.
- 2.16 “Services” means the services in a Contract and any services associated with the Goods.
- 2.17 “Supplier” means Nodeify Pty Ltd



3. Order for Goods/Services

- 3.1 Any order by the Customer to the Supplier and/or any acceptance of any Goods and/or Services by the Customer will constitute agreement to these T&Cs by the Customer.
- 3.2 If the Supplier accepts an Order, the parties will have created a binding Contract and the Supplier will supply the Goods and/or Services to the Customer, and the Customer will pay the Price to the Supplier in accordance with the terms of the Contract (which will include these T&Cs)
- 3.3 The Customer is not entitled to cancel any Contract and must pay to the Supplier any costs associated with the Customer purporting to cancel a Contract.
- 3.4 The Customer must provide the Supplier with written details of any required specifications or properties of Goods and/or Services at the time the Customer provides an Order to the Supplier.
- 3.5 The Customer must ensure the specifications or properties of Goods and/or Services stated in any Order by the Customer will be fit for the intended purpose of the Goods and/or Services.
- 3.6 The supplier will be entitled to rely on the accuracy of any plans, specifications or other information provided by the Customer.
- 3.7 If there are any errors in any plans, specifications or other information provided by the Customer to the Supplier, the Supplier will be entitled to vary the Price.
- 3.8 The Supplier may cancel any Contract at any time prior to delivery of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.

4. Price

- 4.1 The Price is exclusive of GST unless otherwise stated by the Supplier in writing.
- 4.2 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.
- 4.3 The Supplier may charge, in addition to the Price, any other fees and charges that the Supplier notifies to the Customer from time to time.

5. Credit Terms

- 5.1 The Customer must make full payment of the Price and any other amounts payable to the Supplier before the Supplier supplies Goods and/or Services to the Customer unless the Supplier has granted credit terms to the Customer
- 5.2 If the supplier grants credit terms to the Customer, the Customer agrees to grant the Supplier a charge over the whole of the Customer's present and future undertaking, property and assets (including, without limitation, all of the Customer's legal and beneficial interests in freehold and leasehold land) as security for any amount owed by the Customer to the Supplier and the Customer acknowledges the Supplier may lodge caveats or take any action to enforce the Supplier's security over the charged property.
- 5.3 The Customer must reimburse the Supplier for the full amount of any bank or other fees associated with any dishonored payments or cheques and any legal, debt recovery or other expenses associated with any action by the Supplier to recover money from the Customer.
- 5.4 The Supplier may charge monthly compound interest on any overdue amounts owed by the Customer at a rate of 10% per annum above the Reserve Bank of Australia's cash rate target.



6. Risk and Retention of Title

- 6.1 The Supplier remains the owner of the Goods/Services supplied by it to the Customer pursuant to these Terms until the Customer pays for them in full and the Customer acknowledges that it holds the Goods as a bailee and fiduciary agent for the Supplier until that time,

7. Set Off:

- 7.1 In addition to rights of set off under the general law, the Supplier may offset any debt or liability the Customer (alone or with others) owes to the Supplier against any debt or liability the Supplier owes to the Customer on any account; and
- 7.2 If a liability is unliquidated or otherwise unascertained, the Supplier may offset an amount estimated by the Supplier in good faith on account of such liability, without prejudice to the obligation of the parties to account for any shortfall or excess; and
- 7.3 The Supplier holds the benefit of this clause on trust for itself and for each and every related body corporate of the Supplier now existing or to exist.

8. Force Majeure

- 8.1 The Supplier will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier's obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier's reasonable control and if any such failure or delay continues for a period of 30 days the Supplier may terminate any affected Contract.

9. Confidential Information and Intellectual Property

- 9.1 The customer will not use, or disclose to any third party, any Confidential Information disclosed by the Customer.
- 9.2 No supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services.

10. Warranties

- 10.1 Where applicable, the Supplier's goods come with Guarantees that cannot be excluded under the Australian Consumer Law. Where applicable the customer is entitled to a replacement or refund for a major failure and for compensation for any reasonable foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 10.2 The Supplier does not warrant the Goods and/or Services are fit for any purpose whether or not made known by the Customer or any third party to the Supplier or any member of the Supplier's Personnel.
- 10.3 The Supplier excludes all express and implied conditions and warranties in relation to the goods and/or Services except those conditions or warranties that cannot be excluded by law.
- 10.4 Nothing in these T&Cs are intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act (Cth) 2010 or any Fair Trading of any State or Territory of Australia except to the extent permitted by such Acts.

11. Liability

- 11.1 The Supplier's liability for any Liability or Claim in relation to these T&Cs, any Contract, and any supply of Goods and/or Services will be limited to the amount of the Price.
- 11.2 The Supplier will not be liable to the Customer or any other person for the Liability or Claim of any kind whatsoever arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any other remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.



12. Indemnity

- 12.1 The Customer indemnifies the Supplier and each member of the Supplier's Personnel on a full and Continuing indemnity basis from and against any Liability or Claim arising directly or indirectly in Relation to:
- (a) the Customer's breach of these T&Cs or any Contract;
 - (b) the negligence or willful misconduct of the Customer or any member of the Customer's Personnel;
 - (c) damage to the property of the Customer or any third party during and delivery of Goods;
 - (d) any spillage, breakage or contamination of Goods during any transport or delivery;
 - (e) the Goods and/or Services not being fit for any particular purpose;
 - (f) any tests conducted by a third party in relation to Goods and/or Services;
 - (g) the Customer or any member of the Customer's Personnel directly or indirectly causing any delay in the supply of any Goods and/or Services;
 - (h) the Customer or any member of the Customer's Personnel refusing to accept any delivery; or
 - (i) the Customer or any member of the Customer's Personnel purporting to cancel a Contract.

13. Termination

- 13.1 The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:
- (a) the Customer breaches a term of these T&Cs or any Contract and does not remedy the
 - (b) breach within 7 days of receiving a notice from the Supplier requiring the Customer to do so;
 - (c) the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;
 - (d) there is any direct or indirect change in the Control of the Customer; or
 - (e) an Insolvency Event arises in relation to the Customer.

14. Dispute Resolution

- 14.1 If a dispute arises out of or relates to this contract (including any dispute as to breach or termination of the contract) a party to the contract may not commence any court proceedings relating to the dispute unless it has complied with this clause except where the party seeks urgent interlocutory relief.
- 14.2 A party to this contract claiming that a dispute ("the dispute") has arisen under or in relation to this contract must give written notice to the other party to this contract specifying the nature of the dispute.
- 14.3 On receipt of that notice by that other party, the parties to this contract must endeavour in good faith to resolve the dispute expeditiously using mediation.
- 14.4 The parties must jointly appoint a mediator and agree on the mediator's remuneration. If the parties fail to agree on the appointment and remuneration within 5 days of service of the notice or any other time that the parties agree to in writing, either party may apply to the President of the Law Institute of Victoria or the President's nominee to appoint a mediator and determine the mediator's remuneration.
- 14.5 The parties must observe the instructions of the mediator about the conduct of the mediation.
- 14.6 If the dispute is not resolved within 10 days after the mediator is appointed, or any other time that the parties agree in writing, the mediation ceases.
- 14.7 In the event that the parties fail to resolve the dispute at Mediation the dispute shall be resolved by Arbitration but in the event that either party object to the dispute going to Arbitration the dispute shall be resolved by the Court.
- 14.8 Each party must pay an equal share of the costs of the mediation to the mediator and each party agrees to indemnify the mediator against liability in respect of the mediation of the dispute.



14.9 If the dispute is resolved, each party must sign the terms of agreement and the terms are binding on the parties and override the terms of this contract if there is any conflict.

14.10 The mediation procedure is confidential and:-

- (a) written statements prepared for the mediator or for a party, and
- (b) any discussion between the parties and between the parties and the mediator before or during the mediation procedure, cannot be used in any legal proceedings.

15. Miscellaneous

15.1 These T&Cs or any Contract may only be amended with the Supplier's express written agreement.

15.2 Any Waiver by the Supplier must be express and in writing.

15.3 The Supplier's rights under these T&Cs or any Contract do not exclude any other rights of the Supplier.

15.4 If any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply.

15.5 The Customer must immediately provide written notice to the Supplier if there is any direct or indirect change in the Control of the Customer.

15.6 The Supplier may assign any rights or obligations under any Contract or these T&Cs or any Contract to any third party.

15.7 The Customer may only assign any rights or obligations under any Contract or these T&Cs or any Contract with the Supplier's prior written consent.

15.8 These T&Cs and any Contract will be governed by the law of the state in which Supplier's address is located.

16. Interpretation

16.1 In these T&Cs:

- a. the headings will not affect interpretation of these T&Cs;
- b. the singular includes the plural and vice versa, and a gender includes other genders;
- c. any other grammatical form of a word or expression defined in these T&Cs has a corresponding meaning;
- d. a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- e. a reference to a party to a document includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- f. a reference to a person includes a natural person, body corporate, partnership, trust, association or any governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, corporation or instrumentality or any other entity;
- g. a reference to a statute, ordinance, code or other law and any includes regulations, rules and other instruments under the statute, ordinance, code or other law and any consolidations, amendments, re-enactments or replacements;
- h. a word or expression defined in the Corporations Act has the given meaning to the word or expression in the Corporations Act;
- i. the meaning of general words is not limited by specific examples introduced by "including" "for example" or similar expressions;
- j. any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- k. any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- l. a rule of construction does not apply to the disadvantage of a part because the party was responsible for the preparation of these T&Cs or any part of these T&Cs; and
- m. if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.