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## Terms of Trade

Nutava Pty. Ltd. (ACN 608 322 087) ("**Supplier**")

and

The party who accepts a proposal connected to these terms and conditions ("**Customer**")

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This AGREEMENT is made between:

Nutava Pty. Ltd. (ACN 608 322 087) of Suit 9, Level 1, 251 Hay Street, East Perth, Western Australia 6004 Australia ("**Supplier**")

and

The party who accepts a proposal connected to these terms and conditions ("**Customer**")

## RECITALS

- A. The Supplier operates a business trading as Nutava Software.
- B. The Supplier agrees to supply goods and/or services to the Customer on the terms and conditions of this Agreement.

## 1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

**"Agreement"** means these terms of trade (including any quote, Order, credit application, schedule or annexure);

**"CCA"** means the *Competition and Consumer Act 2010* (Cth) as amended from time to time;

**"Default Event"** means any of the following events:

- i. an Insolvency Event;
- ii. the Customer ceases or threatens to cease conducting business in the normal manner, applies for deregistration or receives a deregistration notice;
- iii. any cheque the Customer provides to the Supplier is dishonoured for payment;
- iv. the Customer fails to pay any invoice or demand for payment issued by the Supplier; or
- v. the Customer breaches any term of this Agreement or any other agreement between the Supplier and the Customer.

**"Insolvency Event"** means the happening of any of the following events in relation to the Customer ("**relevant party**"):

- i. in the case of a corporation:
  - A. the relevant party is unable to pay its debts or fails to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001* (Cth) or it is deemed to be unable to pay its debts under section 585 or 589(4) of the *Corporations Act 2001* (Cth);
  - B. the relevant party calls a meeting of creditors or enters into or proposes to enter into any composition with creditors, including a deed of company arrangement;
  - C. an application is made to the court that the relevant party be wound up;
  - D. a liquidator, administrator or trustee is appointed in respect of the relevant party or a controller, as defined in the *Corporations Act 2001* (Cth), is appointed in respect of any of the relevant party's assets; or
  - E. the relevant party is wound up or dissolved; or
- ii. in the case of a natural person:
  - A. he or she is unable to pay all his or her debts as and when they become due and payable;

or

- B. he or she proposes to enter into or enters into any form of arrangement (formal or informal) with his or her creditors or any of them or he or she becomes bankrupt; and

“**Order**” means an order for goods and/or services submitted to the Supplier by the Customer.

## 2. INTERPRETATION

- i. In this Agreement, the following rules of interpretation apply unless the context requires otherwise:
  - A. where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - B. a reference to any party to this Agreement or any other agreement or document includes that party’s agents, sub-contractors, successors or permitted assigns;
  - C. a reference to **dollars** or **\$** is to Australian currency unless otherwise specified;
  - D. a reference to a right or obligation of any two or more persons confers that right or imposes that obligation, as the cause may be, jointly or severally;
  - E. a reference to **conduct** includes any omission, statement or undertaking, whether or not in writing;
  - F. a reference to **includes** means “includes without limitation”; and
  - G. the *Sale of Goods (Vienna Convention) Act 1986 (WA)* is excluded.
- ii. If there is any conflict between this Agreement and an Annexure, this Agreement shall prevail to the extent of any inconsistency.

## 3. APPLICATION

- i. The terms of this Agreement apply in every case where the Supplier provides goods and/or services of any kind to the Customer unless otherwise agreed in writing between the Supplier and the Customer. Acceptance of goods and/or services by the Customer is conclusive evidence before any court that this Agreement (and any variation) applies and is binding on it.
- ii. If the Customer provides the Supplier with an Order, the Supplier is not deemed to have accepted the Order until it is confirmed in writing by the Supplier at its discretion.

## 4. QUOTING AND PRICING

- i. The price for the goods and services will be as:
  - A. quoted by the Supplier in writing to the Customer; or
  - B. specified in an Order accepted by the Supplier in accordance with clause 3.ii.

If the Supplier has not provided a written quote or the Customer has not supplied an Order then the Supplier’s standard charges will apply.
- ii. All prices are exclusive of any delivery costs, as well as any taxes, tariffs, duties or charges levied. The Customer agrees to pay any such costs, taxes, tariffs, duties or charges irrespective of whether they are directly charged to the Customer or the Supplier.
- iii. The Supplier may:
  - A. amend or withdraw a quote for the provision of goods and services at any time before it is accepted by the Customer; and

- B. adjust the Supplier's standard charges from time to time, and the Customer agrees to pay any such adjusted price.
- iv. The Customer may not vary or cancel an accepted Order without:
  - A. the Supplier's written consent; and
  - B. indemnifying the Supplier for any loss or damage the Supplier suffers or incurs as a result of the variation or cancellation.

## 5. OBLIGATIONS

- i. The Supplier will:
  - A. use reasonable endeavours to provide the goods and services in a timely and efficient manner; and
  - B. not be liable for any delay or non-performance in providing the goods or services if the delay or non-performance is attributable, either directly or indirectly, to circumstances beyond the control of the Supplier.
- ii. The Customer will pay all amounts due and payable to the Supplier without deduction or set-off.
- iii. In each and every respect, time shall be of the essence, in the performance of a party's obligations under this Agreement.

## 6. PAYMENT

- i. The Customer agrees to pay all monies which may be owing to the Supplier, for goods and/or services supplied to the Customer, within 7 days of the date of the invoice issued by the Supplier in respect of those goods and/or services, unless the Supplier has requested earlier payment.
- ii. The Supplier may:
  - A. charge the Customer a surcharge for payments made by credit card; and
  - B. charge interest on the daily balance of any amount overdue calculated at the rate of 12% per annum.

## 7. DELIVERY, OWNERSHIP AND RISK

- i. In relation to work that the Supplier performs for the Customer, the Customer will acquire ownership of the product of that work in its tangible form including any correspondence, reports and any other documents prepared for the Customer's use. The Customer is entitled to receive any such papers provided the Customer is not in breach of any term of this Agreement and has paid all monies owing to the Supplier.
- ii. The Supplier retains the copyright and all other intellectual property rights from the work performed by the Supplier for the Customer, unless the Supplier indicates otherwise in writing. The Supplier retains ownership of its working papers in the work that it does for the Customer. The Supplier is entitled to use, analyse, share and develop the knowledge, experience and skills of general application gained through working with the Customer.

## 8. RECORDS MANAGEMENT

- i. The Supplier will make reasonable efforts to store the Customer's file for a period of up to 7 years after completion of the Customer's work ("**Hold Period**"). After the Hold Period, the Customer's file will be destroyed, unless the Customer instructs otherwise in writing.
- ii. If the Customer wishes to access their file during the Hold Period, the Supplier may charge a retrieval fee and any reasonable photocopying charges.

## 9. CREDIT

- i. The Customer authorises the Supplier to carry out any credit checks with third parties.
- ii. The Supplier reserves the right at any time (without providing any reasons) to:
  - A. impose credit limits, which may be varied from time to time. If the Customer exceeds the credit limit, then goods and services may be withheld until the Customer's account is back within the credit limit;
  - B. withdraw any credit trading account granted to the Customer; and
  - C. refuse to extend any further credit to the Customer.
- iii. The Customer warrants that the credit to be provided to it by the Supplier is to be applied wholly or predominantly for business purposes or investment purposes (other than investment in residential property).

## **10. WARRANTIES AND LIMITATION OF LIABILITY**

- i. Except as required by law, the Supplier gives no express warranty in relation to any goods or services supplied to the Customer. The Customer acknowledges that it has not relied on any representation or warranty made on behalf of the Supplier.
- ii. All warranties, guarantees and conditions implied at common law or under statute are expressly excluded from this Agreement unless such exclusion would be illegal or void.
- iii. To the extent permitted by law, liability under the Agreement or a warranty, guarantee or condition which cannot legally be excluded is limited to:
  - A. supplying the services again; or
  - B. paying the value of the goods the subject of this Agreement.
- iv. Except as expressly provided in this Agreement, the Supplier is not liable for any consequential loss or damage (including but not limited to loss of profits, loss of revenue, loss of business opportunities, loss of anticipated savings and damage to goodwill).
- v. This clause 10 survives the termination of this Agreement.

## **11. INDEMNITY**

- i. The Customer shall indemnify the Supplier and the Supplier's officers, employees, contractors and agents against all liability, loss, claims, actions, suits, demands, costs, expenses, including all debt collection and legal costs (on a solicitor/client basis) arising in any way out of a breach by the Customer of this Agreement.
- ii. This clause 11 survives the termination of this Agreement.

## **12. TERMINATION**

- i. The Customer may give notice to the Supplier at any time that it wishes to terminate this Agreement. If this occurs, the Customer must pay the Supplier's fees for work done, including all reasonable and unavoidable costs incurred by the Supplier that are attributable to the termination.
- ii. Without prejudice to any of the Supplier's accrued rights or remedies:
  - A. if an Insolvency Event occurs, the Supplier may immediately terminate the Agreement upon notice to the Customer; and
  - B. if a Default Event occurs, then:
    - I. any moneys payable by the Customer to the Supplier whether due for payment or not will become immediately due and payable;

- II. the Supplier may cancel any outstanding order or arrangement with the Customer; and
- III. the Supplier may terminate the Agreement immediately upon the Default Event not being remedied within 7 days of the receipt of a notice from the Supplier requesting the Default Event be remedied.

**13. NOTICES**

- i. Any notices given in accordance with this Agreement must be in writing and sent by email or post to the recipient's last known place of address.
- ii. A notice sent by email is regarded as given and received when sent by the sender unless the:
  - A. sender receives a report of delivery failure or delivery delay;
  - B. sender receives an "**Out of Office**" reply or similar response; or
  - C. recipient informs the sender that the notice is illegible, incomplete or corrupted within 4 hours of the notice being transmitted.
- iii. A notice delivered other than on a business day or after 4.00pm (recipient's time) is to be regarded as being received at 9.00am on the following business day and a notice delivered before 9.00am (recipient's time) is to be regarded as being received at 9.00am.

**14. GENERAL**

**a. No Waiver**

No failure to exercise and no delay in exercising any right, power or remedy, under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

**b. Entire Agreement**

This Agreement records the entire agreement between the parties and prevails over any earlier agreement, written or oral, which are of no further effect.

**c. Variations**

No variation to this Agreement is enforceable unless it is in writing and signed by the parties.

**d. Severance**

If any provision of this Agreement are invalid or unenforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid or unenforceable provision shall be and continue to be valid and enforceable in accordance with their terms.

**e. Counterpart**

- i. This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.
- ii. This Agreement is binding on the parties on the exchange of counterparts. A copy of a counterpart sent by email or facsimile machine:
  - A. must be treated as an original counterpart;
  - B. is sufficient evidence of the execution of the original; and
  - C. may be produced in evidence for all purposes in place of the original.

**f. Governing Law**

This Agreement is governed by the laws of Western Australia and the Commonwealth of Australia and each party irrevocably submits to the non-exclusive jurisdiction of the Courts of Western Australia.