

Terms and Conditions

RECITALS

- A. NECA is the peak industry body that represents the best interests of the electrical and communications contracting industry in Australia.
- B. NECA is responsible for providing the Subscriber with, and the said subscriber agrees to receive, the NECA Safety Services.
- C. The Subscriber carries on the business of Electrical Contractor
- D. NECA has agreed to grant to the Subscriber rights to the NECA Service on the terms and conditions of this Agreement.

THE PARTIES AGREE:

1. Definitions and interpretation

1.1 Definitions

In this Agreement the following terms shall, unless the context otherwise requires, have the following meanings:

Agreement means this agreement (including any Schedules) and any document that varies or supplements it;

Authorised Use means the use, other than an Unauthorised Use, of the NECA Services by Authorised Users for training, management and safety compliance purposes only.

Commencement Date means the date when a company profile is activated on the NECA online safety management system;

Confidential Information means any information:

- (a) relating to the business of NECA in the provision of the NECA Service;
- (b) of NECA or the Subscriber which is designated by the respective owner as confidential; or
- (c) of NECA or the Subscriber which is of a confidential or sensitive nature, which is marked or denoted as confidential or which a reasonable person to whom that information is disclosed or to whose knowledge the information comes would consider confidential,

which is disclosed by NECA or the Subscriber to the other, directly or indirectly, or otherwise comes to the knowledge of that party in relation to or in connection with this Agreement, whether that information is in oral, visual or written form or is recorded or embodied in any other medium;

Intellectual Property means copyright, all rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trademarks, registered and unregistered designs, look and feel, circuit layouts and all other rights resulting from intellectual activity in, but not limited to, the industrial, scientific, literary or artistic fields;

Package means the safety package the subscriber chooses to subscribe to from time to time, which must include the NECA Safe SMS (Safety Management System) together with NECA Safe Online. Any other add-on services, management liability insurance, online training, provision of the red book or any other services the subscriber has chosen will occur additional cost and considered separate from this agreement.

Subscribership Fee means the fee stated in Item 2 of the Agreement;

Unauthorised Use shall mean any and all of the following activities:

- (a) any use of the NECA Services by other than an Authorised User;
- (b) any commercial use by a Subscriber and/or any Unauthorised user thereof of the NECA Services or any constituent elements thereof.

2. Period of Subscription

- (a) The Subscription will commence on the Commencement Date and for a minimum period of one (1) year and shall continue indefinitely until the subscriber terminates the agreement by providing NECA with a minimum period of 30 days notice on or after the agreement has run for eleven (11) months. **(Term)**.
- (b) In consideration of the payment of the Subscription Fee, NECA provides the Subscriber with the NECA Safety Services.

3. Subscription Fee and payment

- (a) The Subscriber must pay NECA the Subscription Fee at the times and in the manner provided in Item 4 of the Agreement.
- (b) The Subscriber acknowledges and agrees that if a service is cancelled or rescheduled for any reason, the Subscriber shall not be relieved of any of its obligations under this Agreement.
- (c) Subscription fee does not cover the cost of any travel, flights, accommodation, car hire or meals associated with the delivery of face to face training. The Subscriber agrees to pay additional cost associated with this item for training conducted outside of the NECA offices.

4. Changes to the Agreement

NECA can change the term of this Agreement at any time by giving the Subscriber 14 days notice. If NECA makes any changes to price, NECA will provide the subscriber with 21 days notice. If NECA makes any changes to the price or some other material term to this Agreement the subscriber may terminate the agreement on 21 days written notice.

5. Subscriber obligations

- (a) The NECA Service shall be used by the Subscriber for Authorised Use only and only for the purposes as set out in this Agreement.

- (b) The NECA Service shall not be used for Unauthorised Use.

6. NECA's obligations

NECA :

- (a) will use its best endeavours to provide the NECA Safe Online training to the Subscriber at mutually convenient times and places for the Subscriber.
- (b) does not provide financial services, financial services advice, insurance policies, insurance advice and other related advice.
- (c) will not carry over any training courses or services after each 12 month period cycle has ended and after the expiry of this period any credits in relation to the training courses or services will be forfeited without any refund.
- (d) level of subscription as outlined in Item 2 of this Agreement.

7. Intellectual Property

- (a) NECA grants to the Subscriber a non-exclusive, non-transferable, royalty free licence for the Term to use NECA Intellectual Property strictly for the purposes of performance of this Agreement.
- (b) Each party acknowledges that the other party's Intellectual Property is the property of the owning party, and it has no right, title or interest in or to the Intellectual Property of the other party except as expressly set out in this Agreement.

8. Confidentiality

- (a) Neither party may disclose any Confidential Information of the other party without obtaining the prior written consent of the other party.
- (b) A party may disclose any Confidential Information:
 - (i) to its employees, officers and agents on a need to know basis provided that they comply with the obligations of this Agreement;
 - (ii) if required to do so, to the extent that the disclosure is required by law; and
 - (iii) to any professional advisors.

9. Warranty

- (a) NECA warrants to the Subscriber that it has full power, capacity and authority to enter into and perform its obligations under this Agreement.
- (b) The Subscriber warrants to NECA that it has full power, capacity and authority to enter into and perform its obligations under this Agreement.

10. Indemnities

- (a) The Subscriber agrees to indemnify and keep indemnified NECA against any liability, actions, claims, demands, damages, costs and expenses incurred or suffered by NECA in connection with or arising in any way out of the Agreement, including but not limited to:
 - (i) any breach by the Subscriber of the terms of this Agreement; and
 - (ii) any claim that the use or possession of the Subscriber Intellectual Property by NECA infringes a third party's Intellectual Property rights.

11. Exclusion of liability

Notwithstanding any other provision of this Agreement, NECA shall not be liable to the Subscriber for indirect, incidental, special, consequential or punitive loss or damages howsoever arising (including in negligence).

12. Termination

NECA may terminate this Agreement and stop providing the subscriber with the NECA Service at any time if:

- (a) NECA believe, on reasonable grounds, that the subscriber has caused genuine distress to any of NECA employees, agents or contractors in connection with the supply of the NECA Service.
- (b) Without prejudice to any other rights it may have, either party may terminate this Agreement by notice in writing to the other party in the following circumstances:
 - (i) the other party is in breach of any of the terms of this Agreement and fails to remedy the breach within 7 days after the date on which written notice of the breach has been served on the other party;
 - (ii) if the other party commits an Act of Bankruptcy; and
 - (iii) if, for any reason, either party, in the reasonable opinion of the other party, comes into general disrepute or is the subject of criticism that may adversely reflect upon the other party, the party forming this opinion may terminate this Agreement providing 7 days written notice to the other party.
- (c) Neither party will be liable for any failure to carry out any provision of this Agreement if the failure was caused by circumstances beyond its control, including, but not limited to, acts of God, fire, accident, interruptions to energy supplied, strike, riot, civil commotion or war whether declared or not as a Force Majeure Event. The parties must do all things reasonably necessary to mitigate the effect of the Force Majeure Event on the performance of its obligations.