

# IM Training Pty Ltd T/as On The Job Training – Terms & Conditions of Trade

- 1. Definitions**
  - 1.1 "IM Training" means IM Training Pty Ltd T/as On The Job Training, its successors and assigns or any person acting on behalf of and with the authority of IM Training Pty Ltd T/as On The Job Training.
  - 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting IM Training to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
    - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
    - (b) if the Client is a part of a trust, shall be bound in their capacity as a trustee; and
    - (c) includes the Client's executors, administrators, successors and permitted assigns.
  - 1.3 "Incidental Items" means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by IM Training in the course of it conducting, or supplying to the Client, any Services.
  - 1.4 "Services" means all Services supplied by IM Training to the Client at the Client's request from time to time.
  - 1.5 "Price" means the price payable (plus any GST where applicable) for the Services as agreed between IM Training and the Client in accordance with clause 3 of this contract.
  - 1.6 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 2. Acceptance**
  - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts delivery of, the Services.
  - 2.2 These terms and conditions may only be amended with both parties' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and IM Training.
  - 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 3. Price and Payment**
  - 3.1 The Price shall be as indicated on invoices provided by IM Training to the Client in respect of the Services supplied.
  - 3.2 Time for payment for the Services shall be of the essence and will be stated on the invoice, quotation, or any other order forms. If no time is stated, then payment will be due seven (7) days following the date of the invoice.
  - 3.3 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by IM Training nor to withhold payment of any invoice because part of that invoice is in dispute.
  - 3.4 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to IM Training an amount equal to any GST IM Training must pay for any supply by IM Training under this or any other agreement for providing IM Training's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4. Delivery of Services**
  - 4.1 At IM Training's sole discretion delivery of the Services shall take place when:
    - (a) the Services are supplied to the Client at IM Training's address; or
    - (b) the Services are supplied to the Client at the Client's nominated address.
  - 4.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
  - 4.3 IM Training may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
  - 4.4 Any time specified by IM Training for delivery of the Services is an estimate only and IM Training will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that IM Training is unable to supply the Services as agreed solely due to any action or inaction of the Client then IM Training shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 5. Risk**
  - 5.1 Irrespective of whether IM Training retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as IM Training may repossess the Incidental Items in accordance with clause 6.3(f). The Client must insure all Incidental Items on or before delivery.
  - 5.2 IM Training reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 5.1.
- 6. Title**
  - 6.1 IM Training and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
    - (a) the Client has paid IM Training all amounts owing for the Services; and
    - (b) the Client has met all other obligations due by the Client to IM Training in respect of all contracts between IM Training and the Client.
  - 6.2 Receipt by IM Training of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then IM Training's ownership or rights in respect of the Incidental Items shall continue.
  - 6.3 It is further agreed that:
    - (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to IM Training immediately upon request by IM Training;
    - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for IM Training and must pay to IM Training the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
    - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for IM Training and must pay or deliver the proceeds to IM Training on demand.
    - (d) the Client should not convert or process the Incidental Items or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of IM Training and must dispose of or return the resulting product to IM Training as IM Training so directs.
    - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of IM Training;
    - (f) the Client irrevocably authorises IM Training to enter any premises where IM Training believes the Incidental Items are kept and recover possession of the Incidental Items.
- 7. Personal Property Securities Act 2009 ("PPSA")**
  - 7.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
  - 7.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Incidental Items and/or collateral (account) – being a monetary obligation of the Client to IM Training for Services – that have previously been supplied and that will be supplied in the future by IM Training to the Client.
  - 7.3 The Client undertakes to:
    - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which IM Training may reasonably require to:
      - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
      - (ii) register any other document required to be registered by the PPSA; or
      - (iii) correct a defect in a statement referred to in clause 7.3(a)(i) or 7.3(a)(ii);
    - (b) indemnify, and upon demand reimburse, IM Training for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Incidental Items charged thereby;
    - (c) not register a financing change statement in respect of a security interest without the prior written consent of IM Training;
    - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items and/or collateral (account) in favour of a third party without the prior written consent of IM Training.
  - 7.4 IM Training and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
  - 7.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
  - 7.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
  - 7.7 Unless otherwise agreed to in writing by IM Training, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
  - 7.8 The Client must unconditionally ratify any actions taken by IM Training under clauses 7.3 to 7.5.
  - 7.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 8. Security and Charge**
  - 8.1 In consideration of IM Training agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
  - 8.2 The Client indemnifies IM Training from and against all IM Training's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising IM Training's rights under this clause.
- 8.3 The Client irrevocably appoints IM Training and each director of IM Training as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 8 including, but not limited to, signing any document on the Client's behalf.
- 9. The Commonwealth Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")**
  - 9.1 Under applicable State, Territory and Commonwealth Law (including without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
  - 9.2 IM Training acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
  - 9.3 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, IM Training makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services. IM Training's liability in respect of these warranties is limited to the fullest extent permitted by law.
  - 9.4 If the Client is a consumer within the meaning of the CCA, IM Training's liability is limited to the extent permitted by section 64A of Schedule 2.
  - 9.5 If IM Training is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then IM Training may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
  - 9.6 If the Client is not a consumer within the meaning of the CCA, IM Training's liability for any defective Services and/or Incidental Items is:
    - (a) limited to the value of any express warranty or warranty card provided to the Client by IM Training at IM Training's sole discretion;
    - (b) otherwise negated absolutely.
- 10. Default and Consequences of Default**
  - 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at IM Training's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
  - 10.2 If the Client owes IM Training any money the Client shall indemnify IM Training from and against all costs and disbursements incurred by IM Training in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, IM Training's contract default fee, and bank dishonour fees).
  - 10.3 Further to any other rights or remedies IM Training may have under this contract, if a Client has made payment to IM Training by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by IM Training under this clause 10 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 11. Cancellation**
  - 11.1 Without prejudice to any other remedies IM Training may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions IM Training may suspend or terminate the supply of Services to the Client. IM Training will not be liable to the Client for any loss or damage the Client suffers because IM Training has exercised its rights under this clause.
  - 11.2 IM Training may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice IM Training shall repay to the Client any money paid by the Client for the Services. IM Training shall not be liable for any loss or damage whatsoever arising from such cancellation.
  - 11.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by IM Training as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 12. Privacy Act 1988**
  - 12.1 The Client agrees for IM Training to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by IM Training.
  - 12.2 The Client agrees that IM Training may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
    - (a) to assess an application by the Client; and/or
    - (b) to notify other credit providers of a default by the Client; and/or
    - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
    - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
  - 12.3 The Client consents to IM Training being given a consumer credit report to collect overdue payment on commercial credit.
  - 12.4 The Client agrees that personal credit information provided may be used and retained by IM Training for the following purposes (and for other agreed purposes or required by):
    - (a) the provision of Services; and/or
    - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
    - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
    - (d) enabling the collection of amounts outstanding in relation to the Services.
  - 12.5 IM Training may give information about the Client to a CRB for the following purposes:
    - (a) to obtain a consumer credit report;
    - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
  - 12.6 The information given to the CRB may include:
    - (a) personal information as outlined in 12.1 above;
    - (b) name of the credit provider and that IM Training is a current credit provider to the Client;
    - (c) whether the credit provider is a licensee;
    - (d) type of consumer credit;
    - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
    - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and IM Training has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
    - (g) information that, in the opinion of IM Training, the Client has committed a serious credit infringement;
    - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
  - 12.7 The Client shall have the right to request (by e-mail) from IM Training:
    - (a) a copy of the information about the Client retained by IM Training and the right to request that IM Training correct any incorrect information; and
    - (b) that IM Training does not disclose any personal information about the Client for the purpose of direct marketing.
  - 12.8 IM Training will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
  - 12.9 The Client can make a privacy complaint by contacting IM Training via e-mail. IM Training will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 13. General**
  - 13.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
  - 13.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which IM Training has its principal place of business, and are subject to the jurisdiction of the courts in Queensland.
  - 13.3 IM Training shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by IM Training of these terms and conditions (alternatively IM Training's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
  - 13.4 The Client agrees that IM Training may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for IM Training to provide Services to the Client.
  - 13.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
  - 13.6 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.