

## Terms and Conditions - Booking through UQ Pay

### 1. Definitions and Interpretation

#### Definitions

**Confidential Information** means all information disclosed by or on behalf of UQ or the Purchaser (**the Discloser**) to the other party (**the Recipient**) in connection with a Contract or created using that information, which is confidential in nature and designated as confidential or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information. Confidential Information does not include any information which:

- (a) is or becomes public, except through breach of a confidentiality obligation;
- (b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient;
- (c) the Recipient receives from another person on a non-confidential basis.

**Contract** means an agreement between UQ and the Purchaser, made up of the terms specified in the Description and these Terms and Conditions.

**Deliverables** means Services and/or the documentation to be provided by UQ to the Purchaser as described in the Description.

**Description** means the information made available online by UQ which describes the particulars of the Services to be provided to the Purchaser including the Deliverables, cost, mode of delivery, date of delivery (if relevant), duration and overview of the Services.

**GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*

**Intellectual Property Rights** includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights, plant breeders rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Contract but excludes Moral Rights.

**Laws** means all:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of Queensland;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables;
- (c) the requirements of any authority with jurisdiction in respect of the Deliverables, as applicable; and
- (d) fees and charges payable in connection with the foregoing.

**Moral Rights** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of the Description.

**Purchaser** means the person or entity listed in the personal details section of the booking in UQ Pay.

**Services** means the short course, training, seminar or other professional development which UQ will provide to the Purchaser, or the Purchaser's employee or representative, as set out in the Description.

**UQ** means The University of Queensland ABN 63 942 912 684 a body corporate established by the *University of Queensland Act 1998* (Qld).

**UQ Pay** means UQ's online booking and payment portal.

### **Interpretation**

In this Contract unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (e) agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (f) the headings to the clauses are not to affect the interpretation; and
- (g) unless otherwise specified in the Description, all currency amounts are in Australian dollars.

## **2. The Contract**

- (a) A Contract will be formed between UQ and the Purchaser on the terms of these Terms and Conditions when the Purchaser completes the required details and makes a booking for the Deliverables through UQ Pay.
- (b) Only these Terms and Conditions and the Description will form part of the agreement between UQ and the Purchaser, regardless of the mechanism of payment used in respect of the Deliverables.
- (c) For the avoidance of doubt, receipt of the Services by the Purchaser will constitute acceptance of these Terms and Conditions.
- (d) To the extent of any inconsistency between the Description and these Terms and Conditions, except as set out in clause 10(c), the Description will take precedent.

## **3. UQ to provide Services**

- (a) UQ must provide the Services: -
  - (i) in accordance with and subject to these Terms and Conditions and any terms specified in the Description; and

- (ii) using reasonable care and skill.
- (b) In providing the Services, UQ must comply with all laws.
- (c) If the Purchaser fails to attend the location at the time specified in the Description, UQ will be deemed to have provided the Services and any monies paid by the Purchaser will not be refunded.

#### **4. Use of Subcontractors**

UQ is permitted to use other persons to provide some or all of the Services, at UQ's absolute discretion.

#### **5. Purchaser Obligations**

- (a) The Purchaser must co-operate with UQ during the provision of the Services, as UQ reasonably requires.
- (b) The Purchaser must provide UQ with the information and documentation that it reasonably requires to enable UQ to provide the Services.
- (c) The Purchaser must use the Services (including any Deliverables) solely for the purposes stated in the Description or as reasonably contemplated by this Contract and using reasonable skill and care.

#### **6. Invoicing, Price and Payment**

- (a) UQ will provide an invoice to the Purchaser for the price set out in the Description when the Purchaser completes a booking for the Services.
- (b) The Purchaser will pay the invoice either: -
  - (i) through UQ Pay using a credit card at the time of confirming the booking; or
  - (ii) by another payment method acceptable to UQ, by the due date.
- (c) If the Purchaser does not pay an invoice by the due date, UQ will be entitled to suspend its provision of the Services until such time as the invoice is paid by the Purchaser.

#### **7. GST**

- (a) Unless expressly stated otherwise, all amounts specified in this Contract and the Description are GST inclusive.
- (b) Where GST is imposed on a supply under the Contract, the Purchaser shall also pay to UQ an amount equal to the GST (if any) payable on the taxable supply, at the same time that it is required to make the payment for the taxable supply, provided that it receives a valid tax invoice at or before the time of payment. Terms in this clause have the same meaning as in the GST Law.

#### **8. Exclusions**

- (a) To the full extent permitted by law and subject to clause 8(b), UQ excludes all conditions, warranties and guarantees (whether express or implied) and makes no representations and gives no warranties regarding the Services.
- (b) In the event that any condition, warranty or guarantee is imposed or incorporated by law and cannot be excluded, then to the extent UQ is not prohibited from so limiting its liability, the total

liability of UQ (under any legal theory) for any breach of such condition, warranty or guarantee is limited (and, to the extent not prohibited by law, at UQ's option) to:

- (i) supplying the Services again; or
- (ii) the supply of equivalent Services,

and, to avoid doubt, to the extent the Australian Consumer Law (as defined in the *Competition and Consumer Act 2010* (Cth)) prevents UQ from limiting or excluding its liability as specified in this clause or elsewhere in this Contract, the Australian Consumer Law applies to that extent.

## 9. Liability and Indemnity

- (a) Nothing in this Contract operates to limit or exclude:
  - (i) liability that cannot by law be limited or excluded;
  - (ii) the liability of either party in respect of personal injury (including sickness and death) or real or tangible property loss or damage;
  - (iii) liability of either party for fraud, wilful misconduct or for unlawful or illegal acts or conduct; or
  - (iv) the Purchaser's liability under clause 9(b).
- (b) The Purchaser will indemnify, defend and hold harmless UQ and its officers, personnel, agents, successors and assigns (collectively, the **Indemnified**), against any liability arising from, in connection with, or based on allegations of, any of the following:
  - (i) any fraud or wilful misconduct of the Purchaser, its agents, subcontractors or personnel under or in connection with this Contract;
  - (ii) any infringement, or alleged infringement, of a third party's Intellectual Property Rights by the Purchaser in relation to its use of the Deliverables;
  - (iii) any breach by the Purchaser of its obligations of confidentiality in this Contract;
  - (iv) personal injury, death or loss of or damage to real or tangible personal property (including data) caused by the Purchaser, its agents, subcontractors or personnel under or in connection with this Contract; and
  - (v) any claim, action or proceeding by a third party against any of the Indemnified to the extent that it relates to any of the foregoing indemnities.
- (c) Subject to clause 9(d), neither party will be liable to the other party under or in respect of this Contract whether in contract, tort (including negligence) or statute or for any other cause of action for any loss or damage which, although in the contemplation of the parties at the time they entered into this Contract is not a loss or damage which may fairly and reasonably be considered to arise naturally (that is, in the usual course of things) from the breach.
- (d) The parties agree that the following heads of damage arise naturally from a breach of this Contract by the Purchaser and will be recoverable by UQ notwithstanding clause 9(c):
  - (i) third party costs incurred by UQ in preparing for or carrying out its obligations under this Contract;

- (ii) internal project and management costs incurred by UQ in relation to this Contract;
- (iii) reasonable costs of advertising where such advertisement is reasonably necessary or required by law or of providing information to UQ's students and other stakeholders in the event of default by the Purchaser;
- (iv) reasonable legal fees relating to the Purchaser's default;
- (v) statutory liability, including financial penalties imposed by courts, governmental agencies and regulators, relating to the Purchaser's default under this Contract;
- (vi) payment of any legitimate claim made by a third party against UQ for a direct loss resulting from a default by the Purchaser; and
- (vii) expenditure and fees paid that are rendered unnecessary (thrown away) as a result of a breach of this Contract.

## **10. Intellectual Property Rights**

- (a) The Purchaser acknowledges and agrees that UQ owns all Intellectual Property Rights in the Services and Deliverables and in anything (including in electronic form) used or created by UQ or its personnel (including staff, contractors and subcontractors) for or in connection with the supply of the Services.
- (b) Subject to receipt of payment in full pursuant to clause 6, UQ grants the Purchaser a non-exclusive, non-transferable, personal licence to use any Intellectual Property Rights in the Services solely for its own internal business purposes relating to the present or future enjoyment of the Services.
- (c) The Description may specify additional use rights and restrictions on use (including the duration of use), but neither the Description nor any other document or thing forming part of the Contract or any Deliverable, will have any effect to the extent it purports to:
  - (i) authorise the Purchaser to modify any Intellectual Property Rights in any Deliverable or to create derivative works from them or to sell, transfer or otherwise dispose of, or commercialise, such Intellectual Property Rights; or
  - (ii) grant an exclusive licence to any such Intellectual Property Rights; or
  - (iii) assign or otherwise transfer any such Intellectual Property Rights from UQ to any other person.

## **11. Confidentiality and Privacy**

- (a) The parties must not disclose to third parties or use for any purpose (other than for the purpose of providing the Services or using the Deliverables or to the extent specifically authorized in writing by the other party, required by law or the information is already public) any: -
  - (i) Confidential information; or
  - (ii) Information relating directly or indirectly to the other party, the other party's business or this Contract (including without limitation any financial, technical, economic, market and other information, reports, policies, plans, drawings, specifications, designs, data or ideas),

that is disclosed to, communicated to or otherwise created ascertained or discovered directly or

indirectly in the course of or in connection with UQ's provision of the Services whether before or after the date of this Agreement.

- (b) The Purchaser must obtain UQ's written approval before publishing or publicizing any information relating to UQ or the Services.
- (c) UQ may publish material relating to the conduct and conclusions of the Services, including the Deliverables.
- (d) Subject to clause 11(e), if any personal information is provided to UQ, that personal information will be subject to UQ's Privacy Management Policy, which can be viewed [here](#). More information on privacy in relation to UQ can be obtained from the Right to Information and Privacy Office [here](#) and you can contact the Right to Information and Privacy Coordinator [here](#).
- (e) UQ may retain, use and disclose personal information provided by the Purchaser to:
  - a. provide the Services and Deliverables; and
  - b. assist UQ in relation to exercising or enforcing UQ's rights.

## 12. Force Majeure

Neither party has any liability under or may be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from circumstances beyond the reasonable control of that party, other than a COVID-19 Event. The party affected by these circumstances must promptly notify the other in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than three months, either party may terminate this agreement by written notice to the other party.

## 13. Suspension or termination due to COVID-19 Event

- (a) For the purposes of clauses 12 and 13, a COVID-19 Event means an event or circumstance caused by the COVID-19 pandemic, including but not limited to:
  - (i) travel restrictions imposed by a government authority or agency;
  - (ii) actions taken in response to warnings or advice issued by a government authority or agency;
  - (iii) the unavailability or shutdown of premises or facilities;
  - (iv) unavailability of personnel due to illness, isolation or quarantine measures;
  - (v) failure or delay in supply of or access to necessary materials, consumables or equipment;
  - (vi) unavailability of sufficient or economic insurance cover; and
  - (vii) actions taken by a party in relation to paragraphs (i) to (vi).
- (b) In addition to any other rights under this Contract, if a COVID-19 Event occurs that adversely affects a party's ability to perform this Contract (the **COVID-19 Affected Party**), the COVID-19 Affected Party may, by notice in writing to the other party, suspend the performance of all or part of this Contract (a **COVID-19 Suspension Notice**). A COVID-19 Suspension Notice must specify:
  - (i) the details of the COVID-19 Event;

- (ii) the obligations under this Contract that are adversely affected and suspended; and
  - (iii) the period of suspension, which is 90 days unless otherwise agreed by the parties (the **COVID-19 Suspension Period**).
- (c) During the COVID-19 Suspension Period:
- (i) the obligations specified in the COVID-19 Suspension Notice are suspended;
  - (ii) the parties must seek to agree on a course of action to address the COVID-19 Event; and
  - (iii) the parties may agree to extend the COVID-19 Suspension Period.
- (d) For the avoidance of any doubt:
- (i) a party will not be liable to the other for any costs, losses or damages arising as a result of the suspension of obligations by the COVID-19 Suspension Notice;
  - (ii) the parties must continue to perform any obligations under the Contract that are not suspended by the COVID-19 Suspension Notice; and
  - (iii) the COVID-19 Affected Party must resume compliance with suspended obligations as soon as practicable after the COVID-19 Event no longer adversely affects the COVID-19 Affected Party's ability to perform those obligations.
- (e) If the COVID-19 Event continues to adversely affect the COVID-19 Affected Party's ability to perform the suspended obligations upon the expiry of the COVID-19 Suspension Period and the parties have not agreed upon a course of action to address the COVID-19 Event, then this Contract terminates with immediate effect with no further action required by either party.
- (f) Despite any COVID-19 Suspension Period or termination under this clause, the following amounts must be paid in full:
- (i) any amounts due for the performance of obligations up to the date of the COVID-19 Suspension Notice; and
  - (ii) any amounts due for performance of obligations that are not suspended by the COVID-19 Suspension Notice.
- (g) A party may issue more than one COVID-19 Suspension Notice under this clause.

#### **14. Termination**

- (a) UQ may terminate this Contract at any time and for any reason (including for convenience) by no less than 24 hours prior notice to the Purchaser in writing (in which case the Purchaser will refunded the amount paid, if the Services have not yet been provided by UQ).
- (b) A party may terminate this Contract by no less than 7 days prior notice to the other party in writing if the other party fails to rectify a breach of this Contract within 30 days of receipt from the first party of a written notice requiring the other party to remedy that breach.

#### **15. Notices**

- (a) A notice or other communication connected with this Contract has no legal effect unless it is in writing.
- (b) Communications sent by: -

- (i) hand are taken to be received when delivered;
- (ii) post to an address in Australia are taken to be received by the third business day after posting; and
- (iii) post to an address outside Australia are taken to be received by the seventh business day after posting.

## **16. Law and Jurisdiction**

This Contract takes effect, is governed by and will be construed in accordance with the laws from time to time in force in Queensland, Australia. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.

## **17. General**

The parties agree that:

- (a) they will direct all enquiries relating to the Contract to the other party's nominated contact person as set out in the Description and booking details on UQ Pay, or to another person if the other party directs;
- (b) the Contract may only be varied by written agreement of authorised representatives of the parties;
- (c) this Contract sets out all the parties' rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Contract. No other terms apply; and
- (d) their relationship is of principal and contractor. This Contract does not create any partnership, joint venture or employment relationship.