



Terms of trade – New Territory Training (NTT)

1. PRELIMINARY MATTERS

1.1 Definitions

Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with Our then current prices;
- (b) expenses incurred by Us, at the Customer's request or reasonably required as a result of the Customer's conduct;
- (c) Cancellation Fees;
- (d) expenses incurred by Us in re-scheduling a Course at the request of the Customer;
- (e) expenses and variations in our fees and charges arising from variations made, at the Customer's request, to an Order; and
- (f) as set out in, or as determined in accordance with, clause 3.6;

Attendees means the persons nominated by the Customer who will attend the Course.

Business Day means a day that is not a Saturday, Sunday or public holiday in Darwin.

Customer means the person identified on a Quote as the customer and includes the Customer's agents and permitted assigns and, where the context permits, the Attendees.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Order means an order for Courses placed by a Customer in response to a Quote.

Our Website is the website at <https://www.newterritorytraining.com.au/>.

Pre-Enrolment Information Package means and includes Our 'Learner Handbook', Course specific materials and other information provided by Us or available on Our Website.

Quote means a written description of the Course to be provided and an estimate of Our charges for the performance of the required Course set out in the **Pre-Enrolment Information Package**.

Course means the training course to be provided by Us to the Customer in accordance with a Quote and these terms of trade (for more information, see *Our Website*, at <https://www.newterritorytraining.com.au/courses>).

We, Us, Our means **Treescape Solutions Pty Ltd ACN 626 706 456** trading as **New Territory Training** and unless the contrary intention appears, includes our employees, contractors, agents and permitted assigns.

1.2 Interpretation

In these terms of trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through Our Website;

- (b) the singular includes the plural and vice versa;
- (c) a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (d) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and
- (e) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day it must be done on the next Business Day.

1.3 Precedence of these terms

These terms of trade apply to all transactions between the Customer and Us relating to the provision of the Course. This includes all quotations, contracts and variations. These terms of trade take precedence over terms of trade contained in any document of the Customer or elsewhere.

2. QUOTES AND ORDERS

2.1 Provision of Quote

We may provide the Customer with a Quote. Any Quote issued by Us is valid for **7 days** from the date of issue and is otherwise made in accordance with the terms set out in the Quote.

2.2 Requirements of an Order

- (a) A Customer may accept a valid Quote by written notice to Us, at which time the Quote will become an Order for the purpose of these terms of trade.
- (b) Any costs incurred by Us in reliance on incorrect or inadequate information provided by the Customer in the preparation and issue of a Quote may result in the imposition of an Additional Charge.

2.3 Cancellation/Change of Dates & Attendees

If the Customer:

- (a) cancels an Order;
- (b) requires a change of dates or a change in the number of Attendees for the Course; or
- (c) fails to complete the preparation works (see clause 5.1) or pre-requisite requirements (see clause 5.2) within the times specified or required by us,

the Customer:

- (d) may, in our discretion, be required to pay a cancellation/delay/change fee, calculated as follows:
 - (i) 25% of the Quoted fee if cancelled/delayed or changed within 14 days;
 - (ii) 50% of the Quoted fee if cancelled/delayed or changed within 2 days,of the dates set out in the Order for the commencement of the Course (**Cancellation Fee**).
- (e) must pay all Additional Charges incurred by Us before We received notice of the cancellation or change of dates;
- (f) indemnifies Us against any losses We incur, that are in excess of the Cancellation Fee and Additional Charges, as a result of the cancellation or change of dates including, but not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled, and

We may reschedule the provision of the Services under the Course or Courses the subject of the Order and charge Additional Charges that We incur as a result.

2.4 Variation of Order

The Customer may request that its Order be varied (including a request for a change of dates and the number of Attendees) by providing a request in writing to Us. A request for a variation must be agreed to in writing by Us in order to have effect. We reserve the right to refuse a request for variation at our discretion.

3. INVOICING AND PAYMENT

3.1 Manner of Invoicing and Payment Terms

- (a) We will issue an invoice to the Customer in such manner, and at such times, as set out in the Order or at the completion of the provision of the Course.
- (b) The amount payable by the Customer will be the amount set out in the invoice, calculated as the amount for the Course, as set out in the Order, and any Additional Charges and Cancellation Fees.

3.2 Late and Non-Payment

- (a) If any invoice is due but unpaid, We may withhold the provision of any further Course or other services until overdue amounts are paid in full.
- (b) Notwithstanding any other rights We may have under these terms of trade or at law, the Customer must pay Us, on demand, interest at the rate of 10% per month on all monies owed by the Customer to Us that are more than **30 days past due**.

3.3 Third Party Payers

The Customer acknowledges and agrees that it is responsible for the payment of all invoices issued by Us for an Order including where payment is being made by a third party payer or pursuant to a grant or other funding arrangement and if there is any failure or default in payment (whether in whole or part) by any such third party payer, the Customer is liable for and indemnifies us against any such failure or default.

3.4 No Withholding or Offset

The Customer is not entitled to retain any money owing to Us notwithstanding any default or alleged default by Us of these terms of trade, including the supply of allegedly inadequate or delayed provision of a Course. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

3.5 GST

The Customer and We agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the *A New Tax System (Goods and Services Tax) Act 1999* and any other applicable legislation governing GST.

3.6 Additional Charges

- (a) We may require the Customer to pay Additional Charges in respect of costs incurred by Us as a result of: Our reliance on inadequate, incorrect, or late provision of, information provided by the Customer required by Us in order to provide the Course within the specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of:
 - (i) disbursements and other costs and expenses incurred by Us directly in connection with the provision of the Course (whether set out in the Quote or not);
 - (ii) additional work required by the Customer or any other occurrence which causes Us to incur costs in respect of the Customer's Order additional to the quoted cost;
 - (iii) cancellation by the Customer of an Order where cancellation results in loss to Us;
 - (iv) the Customer, or any of the Attendees, failing to complete the Pre-Requisite and Entry Requirements as set out in, and in accordance with, clause 5.2;

- (v) the Customer failing to provide, or providing inaccurate or incomplete, information and instructions necessary for Us to deliver the Course in accordance with the Quote;
 - (vi) a failure of the Customer to allow access to its premises or other site or failing to have its premises or other site ready for Us or stopping or hindering Us from providing the Course.
- (c) We reserve the right to invoice for Additional Charges at the time We incur such costs.

4. OUR OBLIGATIONS

4.1 Provision of the Course

- (a) We agree to supply the Course to the Customer in accordance with the Order and Pre-Enrolment Information Pack. Subject to these terms and conditions and unless otherwise provided for in the Order, Our obligations are limited to the delivery of the Course as agreed with the Customer at the agreed premises or site.
- (b) We may, in Our discretion, subcontract our obligations to provide the Course, in whole or in part, to a third party.

4.2 Course Material

- (a) We will provide each Attendee with Course materials in English and the Customer acknowledges and agrees with its obligations regarding confidentiality and copyright of such material as set out in clause 6 of these terms of trade.
- (b) The Customer acknowledges that the Course materials provided by Us do not constitute any user's or manufacturers operating or maintenance manuals or materials (or similar) for any equipment, system or process and that We have no obligation to provide the Customer (or the Attendees) with any updates to these materials following the completion of the Course in which such materials were given.

5. CLIENT OBLIGATIONS AND PREPARATION OF PREMISES

5.1 Preparation of the Premises

If we agree to provide the Course at the Customer's premises or other site, the Customer must:

- (a) ensure that We have unencumbered and unobstructed access to all areas of the premises reasonably required by Us to provide the Course including access to all services and utilities (including, hot and cold water, electricity, gas and internet access);
- (b) ensure that the premises is a safe working environment;
- (c) ensure that all vehicles, items of plant and equipment and other machinery reasonably required by Us for the provision of the Course are:
 - (i) free and available for Us to use in the performance of the Course;
 - (ii) safe, in full and proper working condition, properly maintained and compliant with all relevant laws, regulations, standards and manufacturers' guidelines and recommendations for their intended use and purpose;
- (d) ensure that any other requirements for the preparation of the Premises, which we may reasonably require, and which We notify you of, are satisfied.

5.2 Pre-Requisites and Entry Requirements

The Customer warrants and agrees that all Attendees have, or will by the commencement of the Course, satisfied all pre-requisites and entry requirements for the provision of the Course, including that each Attendee:

- (a) has completed the registration/enrolment for the Course (available via Our Website), including the declarations contained therein, at least 2 weeks prior to the commencement of the Course;

- (b) is 18 years or older (or obtains Our prior written consent, which We will not unreasonably withhold, to allow participation of an underage Attendee at the relevant Course);
- (c) has a validly issued photo identification;
- (d) has completed all 'pre-works' tasks as set out in the 'pre-work plan' (which we will provide to the Customer Pre-Enrolment Information Package) at least 2 weeks prior to the commencement of the Course;
- (e) completes and submits to Us the Language, Literacy and Numeracy Assessment (LLN) and has a adequate language, literacy and numeracy skills required to interpret and understand work instructions, equipment operating instructions and work health and safety directions;
- (f) has a 'Unique Student Identifier' (USI) number and provides Us with a valid USI for each Attendee at least 2 weeks prior to the commencement of the Course;
- (g) has 'work ready clothes' that is suitable and safe work attire (including proper footwear);
- (h) has successfully completed workplace and site safety training and inductions (as may be required);
complies with all other requirements that are: set out in the Pre-Enrolment Information Pack, advised by Us to You, as set out on Our Website in respect of the relevant course.

5.3 Requirements on Course

The Customer must, during a Course and at all times while we are on site at the Customer's Premises ensure that all Attendees

- (a) comply with the relevant work health and safety policies and procedures in place in respect of the Premises;
- (b) comply with Our expectations and obligations of Attendees set out in Pre-Enrolment Information Pack;
- (c) follow and act in accordance with all Our instructions and directions and those of Our trainers;
- (d) behave in a respectful, ethical and professional manner towards Us, Our trainers and other Attendees.

5.4 Post Course Obligations of the Customer

- (a) The Customer must complete, and ensure that every Attendee of a Course completes, the 'Employer/Student Satisfaction Survey' promptly after receiving the survey from Us but not later than 2 weeks following the completion of the Course.
- (b) We may withhold the issuance of statements of attainment for any Attendee until the Customer's obligations under clause 5.4(a) are satisfied.

5.5 Insurances (public liability and return to work)

The Customer must hold and have current the following policies of insurance:

- (a) Worker's compensation insurance in respect of all Attendees as required by the *Return to Work Act 1986* (NT) and otherwise in accordance with all applicable laws and regulations;
- (b) Public liability insurance in the amount of at least **\$20,000,000.00** for each insurable event in respect of the Customer's premises and/or other sites at which the Course are to be provided; and
- (c) Comprehensive insurance over all vehicles, items of plant and equipment and other machinery to be used by Us and the Attendees in the provision of the Course for their full replaceable value.

6. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

6.1 Confidentiality

- (a) For the purpose of this clause **Confidential Information** includes the intellectual property of, and information about, Us or the Customer (including business, products and services and future business, products and services), financial information, pricing, terms of trade, suppliers, customers, contracts and arrangements, plans strategies and forecasts, research and development information and any other information designated as confidential by Us or the Customer.
- (b) We agree with the Customer and the Customer agrees with Us that, at all times (including after all other obligations between the parties has expired in respect of the Course) to:
 - (i) keep confidential, and not disclose, Confidential Information of the other party that is developed, accessed or acquired in respect of the provision or receipt of the Course except:
 - (A) with the prior written consent of the other party;
 - (B) as required by law;
 - (C) as required by Us in the proper course of providing the Course; and
 - (ii) return all Confidential Information of the other party to that party as soon as practicable.

6.2 Intellectual Property Rights

- (a) The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order or has a licence to authorise Us to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to Us for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified Us against all losses incurred by Us in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.
- (b) Unless specifically agreed in writing between Us and the Customer, all Intellectual Property Rights in any works created by Us on behalf of the Customer vest in Us and remains Our property.
- (c) Subject to payment of all invoices due in respect of the Course, We grant to the Customer a perpetual, non-exclusive licence to use the works created or produced by Us in connection with the provision of the Course under these terms of trade for the purposes contemplated by the Order.

7. DEFAULT BY CUSTOMER

7.1 Events of Default

If the Customer breaches these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within **7 days** of being given notice by Us to do so, the Customer is in default.

7.2 Our Rights on Default

Where an event of default occurs, except where payment in full has been received by Us, We may:

- (a) terminate any or all Orders and credit arrangements (if any) with the Customer;
- (b) withhold certification of Attendees (to the extent it is reasonable and permissible for Us to do so);
- (c) refuse to provide further Courses or other services; and/or
- (d) retain (where applicable) all money paid by the Customer on account of Course or otherwise, and all invoices issued to the Customer by Us will become immediately due and payable.

8. PPSR

8.1 Services provided on Credit

If We, in Our discretion, agree to provide a Course or other services to a Customer on credit terms, we may require the Customer to grant a security interest in our favour as a condition of such terms and, if so,

- (a) We will confirm this requirement in Our Quote; and
- (b) this clause 8 will apply.

8.2 PPSR Provision

- (a) For the purpose of this clause 8, terms used have the meaning given to them under the *Personal Property Securities Act 2009* (Cth) (PPSA) (if any).
- (b) The Customer acknowledges and agrees that We retain a security interest in all goods, equipment and materials provided by Us to the Customer (**Course Materials**) until payment is made in full for Our provision of the Course or other services.

8.3 Security Interest and Enforcement

- (a) The Customer agrees that W may register Our security interest in the Personal Property Securities Register (PPSR) in accordance with the PPSA.
- (b) The Customer consents to any registrations or other action required by Us to perfect Our security interest in the Course Materials.
- (c) In the event of default by the Customer, We reserve Our rights to enforce Our security interest including but not limited to repossession, sale or retention of the Course Materials.
- (d) The Customer will indemnify Us against any costs, expense or losses incurred by Us in enforcing Our security interests (including legal fees and expenses).

9. WARRANTIES AND LIABILITIES

9.1 Provision of the Course

We will conduct the Course in accordance with the description set out in the Pre-Enrolment Information Package and the Order and We will use reasonable endeavours to ensure that the Course is given with reasonable skill, care and professionalism.

9.2 General Exclusions of Liability

- (a) The Customer expressly agrees that use, reliance upon or application of the Course (including Course material) is at the Customer's risk. To the full extent allowed by law, Our liability for breach of any term implied into these terms of trade by any law is excluded.
- (b) We give no warranty in relation to the Course provided, except as expressly set out in these terms of trade. Under no circumstances are We liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Course. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to the Course.

9.3 Provision of Information, advice, assistance and materials

Any advice, recommendation, information, assistance, material or service given by Us in relation to the Course, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. We do not accept any liability or responsibility for any loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance, material or service.

9.4 No Liability for Consequential Loss

To the fullest extent permissible at law, We are not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of the Course, or otherwise arising out of the provision the Course, whether based on terms of trade, negligence, strict liability or otherwise, even if We have been advised of the possibility of damages.

9.5 Customer to Indemnify Us

The Customer indemnifies, and keeps indemnified, Us against all liabilities, costs, expenses, damages and losses (including any direct or indirect consequential losses, loss of profits, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Us arising out of or in connection with:

- (a) any breach of these terms and conditions by the Customer or any of the Attendees;
- (b) any negligence or other tortious conduct of the Customer or any of the Attendees;
- (c) any claim made against Us by a third party (including an Attendee) for death, personal injury or damage to property which is attributable to the acts or omissions of the Customer or any of the Attendees.

This indemnity includes, but is not limited to, any legal costs incurred by Us in relation to meeting any claim or demand or any party/party legal casts for which We are liable in connection with any such claim or demand.

9.6 Australian Consumer Law Guarantees

The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, Our liability (if any) arising from any breach of those guarantees is limited to the supply of Course again or cost of re-supplying the Course again.

9.7 No Merger

This provision **Error! Reference source not found.** remains in force after the termination of these terms of t rade.

10. FORCE MAJEURE

- (a) If circumstances beyond Our control prevent or hinder Our provision of the Course, We are free from any obligation to provide the Course while those circumstances continue. We may elect to terminate any Order or keep any Order on foot until such circumstances have ceased.
- (b) Circumstances beyond Our control include, but are not limited to, strikes, lockouts, riots, natural disasters, severe weather conditions, fire, war, *vis major*, Government decrees, proclamations or orders, epidemics, pandemics, endemics and breakouts of disease, transport difficulties, and failures or malfunctions of computers or other information technology systems.

11. MISCELLANEOUS

11.1 Jurisdiction

These terms of trade are governed by the laws of the Northern Territory of Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts thereof.

11.2 No Waiver for Delay

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

11.3 Notices

- (a) A notice or other communication required or permitted to be given by one party to another must be in writing to the addresses (including email addresses) shown on an Order (or Quote if no Order has been provided) and is received in full and legible form at the addressee's address.
- (b) A notice is regarded as being received at the time and on the day it is actually received, but if it is received on a day that is not a Business Day or after 5:00pm on a Business Day it is regarded as received at 9:00am on the following Business Day.
- (c) Notices sent by email:
 - (i) must state the first and last name of the sender, and
 - (ii) are taken to be signed by the named sender.