

These are the Terms and Conditions on which the Technical and Further Education Commission (ABN 89 755 348 137) (TAFE NSW) will provide the Training Services to you. Please read them carefully.

(A) Sales Contract

1 Training Services

1.1 Training Services

- a) TAFE NSW will perform the Training Services in accordance with the terms and conditions of this Agreement, and warrants that:
 - (i) it has all the necessary licenses and registrations to perform the Training Services;
 - (ii) the Training Services will be provided with due care and skill in a safe, professional and competent manner; and
 - (iii) its Personnel are suitably qualified and experienced to perform the Training Services.
- b) When using or accessing your premises or facilities, TAFE NSW will comply with all applicable policies, procedures and security requirements in operation at those premises or facilities as notified by you.

1.2 Compliance with laws

Each party must comply with all applicable laws in relation to the Training Services.

2 Your responsibilities

- 2.1 You must provide TAFE NSW and its Personnel with all assistance, including safe and appropriate access to your premises and facilities, as reasonably necessary for TAFE NSW to perform the Training Services.
- 2.2 When using or accessing TAFE NSW premises or facilities, you must (and must ensure that the Participants) comply with all applicable policies, procedures and security requirements in operation at those premises or facilities as notified by TAFE NSW.
- 2.3 You must promptly notify TAFE NSW of any personal injury or serious incident relating to the Training Services.
- 2.4 Where a Participant, in the reasonable opinion of TAFE NSW, is acting inappropriately, TAFE NSW may immediately remove that Participant from the Training Course, without a refund of the Fees.
- 2.5 If a Training Course is provided online you must ensure that your systems meet the minimum system requirements as advised by TAFE NSW, otherwise TAFE NSW may not be able to provide the Training Course.

3 Fees and GST

3.1 Fees

- a) You must pay TAFE NSW the Fees and any other amounts payable by you under this Agreement within 30 days of the date of the invoice.
- b) If you genuinely dispute an invoiced amount, you need not pay the disputed amount until the dispute is resolved, however you must pay all undisputed amounts by the due date.

3.2 GST

- a) Unless expressly stated otherwise, all amounts payable for any supply under this Agreement are exclusive of GST. If GST is payable on a taxable supply made under this Agreement and the recipient of that supply receives a tax invoice for that supply, the recipient must pay the GST to the supplier (without deduction or set-off) at the same time as the consideration for the supply is payable.
- b) If a party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an input tax credit. In this clause, terms used that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the meaning given in that Act.

4 Cancellations and Re-scheduling

4.1 Cancellations

- a) If you wish to cancel a Training Course, you must provide TAFE NSW with at least 15 Business Days' prior written notice before the relevant Training Course start date.
- b) If you cancel the Training Course and provide less than 15 Business Days' notice, you must pay TAFE NSW the following cancellation charge:
 - (i) if you give less than 15 Business Days' notice, a cancellation charge of 50% of the Fees will apply;
 - (ii) if you give less than 10 Business Days' notice, a cancellation charge of 80% of the Fees will apply; or
 - (iii) if you give less than 5 Business Days' notice, a cancellation charge of 100% of the Fees will apply.
- c) TAFE NSW may cancel or reschedule a Training Course for convenience at any time on prior written notice to you. If TAFE NSW cancels a Training Course under this clause, TAFE NSW will refund any Fees paid by you for the cancelled Training Course.

4.2 Re-scheduling

If you wish to re-schedule a Training Course to another agreed training date, you must provide TAFE NSW with at least 5 Business Days' prior written notice.

5 Confidentiality

5.1 Confidentiality

Subject to clause 5.3, each party must keep the other party's Confidential Information confidential, and must not disclose it to any person, except:

- a) with the written consent of the other party;
- b) to its Personnel and professional advisors on a 'need-to-know' and confidential basis;
- c) if disclosure is required by law or the rules of any stock exchange; or
- d) in the case of TAFE NSW, to any Government Authority for any legitimate government purpose.

5.2 Return of Confidential Information

On termination or expiry of this Agreement each party must, at the other party's request, promptly return or destroy all copies of the other party's Confidential Information in its possession or control, except to the extent it needs to retain the other party's Confidential Information for record keeping purposes or to comply with any applicable law.

5.3 Government Information (Public Access) Act 2009 (NSW)

You acknowledge and agree that TAFE NSW may be required under the Government Information (Public Access) Act 2009 (NSW) to publish certain information concerning this Agreement.

6 Intellectual Property Rights

6.1 You acknowledge and agree that TAFE NSW (or its licensors) owns all Intellectual Property Rights in the Training Material and any other material created by, or on behalf of, TAFE NSW in relation to the Training Services.

6.2 TAFE NSW grants you a royalty free, non-exclusive and non-transferable license to use the Training Material for the sole purpose of obtaining the full benefit of the Training Services.

6.3 Except as expressly permitted under this Agreement, you must not:

- copy, modify or reproduce any of the Training Material;
- record or transmit any of the Training Services or Training Material;
- reverse engineer, reverse compile or disassemble any software used to provide the Training Services; or
- license, sell, rent, lease, transfer, assign, distribute or otherwise commercially exploit the Training Material.

7 Insurance

7.1 TAFE NSW must effect and maintain, at its own cost, the following insurance coverage:

- public and product liability insurance for at least \$10 million per occurrence;
- professional indemnity insurance for least \$5 million per occurrence; and
- workers' compensation insurance as required by law.

7.2 If requested by you, TAFE NSW will provide you with satisfactory evidence that the above insurance coverage has been effected and is current.

8 Liability

8.1 Neither party will be liable to the other party under this Agreement (whether arising under statute, common law, tort (including negligence), breach of contract or otherwise) for any indirect or consequential loss or damage, loss of profits, business opportunities, goodwill or likely savings.

8.2 To the maximum extent permitted by law, TAFE NSW's total aggregate liability arising from or in connection with this Agreement (whether arising under statute, common law, tort (including negligence), breach of contract or otherwise), is limited to the total Fees payable to TAFE NSW under this Agreement.

8.3 TAFE NSW's liability will be reduced to the extent that any loss or damage is caused or contributed to by you.

9 Force Majeure

9.1 A party will not be liable for any delay or failure to perform its obligations under this Agreement (except for an obligation to pay the fees and charges) to the extent it is caused by an event outside of its reasonable control, provided it takes all reasonable steps to resume compliance as soon as possible.

10 Termination

10.1 Termination by either party

A party may terminate this Agreement at any time by written notice to the other party, if the other party:

- commits a breach of this Agreement that is capable of remedy, and fails to remedy that breach within 14 days of receiving notice of that breach;
- commits a breach of this Agreement that is not capable of remedy; or
- is affected by an Insolvency Event.

10.2 Termination by TAFE NSW

If the Training Services are funded or subsidised by the Government, TAFE NSW may terminate this Agreement at any time on reasonable notice if there is a change in Government funding or policy that adversely affects TAFE NSW.

10.3 Consequences of termination or expiry

- On termination or expiry of this Agreement, you must immediately cease using the Training Material.
- Termination or expiry of this Agreement does not affect any accrued rights or remedies a party may have.
- Clauses 5, 6, 8, 10.3, 11 and 12 survive termination or expiry of this Agreement.

11 Dispute Resolution

11.1 If a dispute arises under this Agreement, a party must give written notice of the dispute to the other party, setting out the details of the dispute. The parties must attempt to resolve the dispute in good faith within 20 Business Days following receipt of the notice of dispute, or such longer period agreed by the parties.

11.2 If the parties are unable to resolve the dispute within the specified time, they must try to resolve it by mediation administered by the Australian Disputes Centre in accordance with its Commercial Mediation Guidelines.

11.3 Each party must follow the dispute resolution process in this clause 11 before starting arbitration or court proceedings (except for urgent injunctive or declaratory relief). Notwithstanding any dispute, the parties must continue to perform their obligations under this Agreement.

12 General

12.1 Entire agreement

This Agreement constitutes the entire agreement between the parties as to its subject matter, and supersedes any prior understanding, representation or agreement between the parties.

12.2 Governing law

This Agreement is governed by the laws of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

12.3 Relationship of the parties

The relationship of the parties is that of independent contractors and nothing in this Agreement is to be treated as creating an employer/employee relationship, agency, partnership or joint venture between the parties.

12.4 Variation

This Agreement may only be varied by written agreement between the parties.

12.5 Severability

If any clause (or part of any clause) in this Agreement is held by a court to be illegal, void or unenforceable, that clause (or part of a clause) is to be regarded as having been deleted from this Agreement, and this Agreement otherwise remains in full force and effect.

12.6 Waiver of rights

A right created by this Agreement may only be waived in writing by the party giving the waiver, and the failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by law does not waive the right or remedy. A waiver of a breach of this Agreement or any other instrument does not waive any other breach.

12.7 Assignment and novation

You must not assign your rights or novate your obligations under this Agreement without the prior written consent of TAFE NSW, which will not be unreasonably withheld.

12.8 Further assurances

Each party must do all things reasonably necessary to give full effect to this Agreement and the matters contemplated by them.

13 Definitions and Interpretation

13.1 Definitions

In this Agreement, unless otherwise stated:

Agreement means the Proposal and these Terms and Conditions, including any schedules, attachments and annexures to them.

Business Day means a day that is not a Saturday, Sunday or public holiday in New South Wales, Australia.

Confidential Information means any information disclosed by a party which:

- a) is marked as confidential;
- b) is by its nature confidential; or
- c) the recipient knows or ought to know is confidential, but excludes information which:
- d) is in the public domain, other than by a breach of confidentiality;
- e) the recipient already knew or had, on a non-confidential basis, before receiving the information from the disclosing party; or
- f) has been independently developed by the recipient.

Fees mean the fees and charges specified in the Proposal Details for the Training Services.

Government Authority means any government agency, authority, department, government instrumentality, Minister, or administrative or judicial authority or body.

Insolvency Event means an administrator, receiver, liquidator or provisional liquidator is appointed to a party, or a party resolves to enter into any settlement, moratorium or similar arrangement for the benefit of its creditors, or a party is unable to pay its debts when they are due.

Intellectual Property Rights mean all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Participant means each eligible individual who is nominated by you to attend a Training Course.

Personnel of a party, means its officers, employees, agents, contractors and sub-contractors

Training Course means the training course(s) TAFE NSW will deliver as part of the Training Services, as specified in the Proposal Details

Training Material means all content and materials used by TAFE NSW to deliver the Training Course, including any handouts, workbooks, slides, videos or other training and educational materials.

Training Services mean the training services to be provided by TAFE NSW, as specified in the Proposal Details.

13.2 Interpretation

In this Agreement, unless otherwise stated:

- a) a reference to this Agreement includes all its parts, including any amendment to or replacement of them;
- b) headings are for convenience only and do not affect interpretation;
- c) a reference to a statute, code or other law includes regulations and other instruments under it, and consolidations, amendments, re-enactments or replacements of any of them;
- d) a reference to a party includes its executors, administrators, successors and assigns;
- e) the singular includes the plural, and vice versa;
- f) words importing a gender include every other gender;
- g) "includes", "including", "for example", "such as" and similar terms are not words of limitation; and
- h) a reference to "\$" or "dollars" is a reference to Australian currency.

(B) Third Party Payment

Payment of fees, additional costs, and other charges.

All student fees and charges are reviewed on a yearly basis and are subject to change.

- An enrolment is not complete, and a person is not entitled to attend class and/or participate in training until this Third-Party Payment Agreement has been completed and returned to TAFE NSW, or either the relevant student fee has been paid (or fee instalment by due date), the concession fee or have been exempted from the student fee.
- An agreement will not be established where the third-party is identified as a bad debtor with TAFE NSW.
- Payment options are provided on the invoice issued to the business/entity. You **MUST** quote the invoice number or reference number when making payment. If the student has already received a fee notification, the third party must **NOT** quote the fee notification reference number.
- TAFE NSW will **NOT** accept cash for payment of fees or enrolment-related charges. You may pay by Electronic Funds Transfer (EFT), Credit Card, Bpay, cheque or money order payable to TAFE NSW. Please call 1300 338 233 to make payment by Credit Card. All other payment details are provided on the Tax Invoice.
- The third-party payment terms are 30 days from the date of invoice.
- Student payment terms is by the due date of the invoice.
- You may have the option to pay the student fee in more than one instalment.
- You will be notified when second and/or further payments are due.

Fee Categories

- Students who receive a specified Commonwealth benefit or allowance may be eligible to pay a concession fee per course, up to and including Certificate IV, instead of the student fee.
- Aboriginal or Torres Strait Islander students who live or work in NSW, or live in identified border postcodes, may be exempt from paying the student fee in subsidised training.
- Students in receipt of the Disability Support Pension or students with a disability (clients of a Teacher/Consultant) may be exempt from paying the student fee in subsidised training.
- **Note:** The concession fee may be payable by instalments. Check with the college of enrolment.
- **Note:** NSW Apprentices and trainees must provide proof of their status as an apprentice or trainee at time of enrolment.
- **Note:** Welfare/Benefit recipients are required to provide a CRN and/or documentary evidence to be eligible for a Concession fee.
- For more information about fees, additional costs and other charges go to tafensw.edu.au.

Additional charges may apply to the course for:

- essential equipment and items that become property, such as, chef knives, licence fees;
- an optional charge for items that are not essential for your study, such as exotic or non-standard flowers or other raw materials. an optional charge for alternate forms of access to an item or service that is essential for your training, such as a textbook, rather than the on-line materials.

- The student fee (or fee exemption) is for the first attempt at training, including the Unit/s of Competence (UoC) within your course. Additional fees may apply for a second/repeat attempt at a UoC.
- Agreement Termination - If the third-party elects to terminate this agreement: the third-party must provide advice in writing to TAFE NSW specifying the request and grounds for termination of the agreement.
- The date TAFE NSW receives the agreement termination in writing becomes the termination effective date.
- The third-party remains liable for any unpaid amount due prior to or on the agreement termination effective date.
- A refund will be applied to pre-paid future fee instalments due after the agreement termination effective date.
- The student will be notified of the agreement termination and reason in writing and a TAFE NSW Fee Notification provisioned for all outstanding fees.
- An instalment plan may be established for the student's remaining student/concession fees where applicable.

TAFE NSW will terminate this agreement where:

- The student discontinues training upon exclusion from all TAFE NSW services due to a conduct and disciplinary matter.
- The third-party fails to meet payment terms.
- Withdrawal notification is received in writing.

Withdrawal

- Students who withdraw from their training are required to notify their campus in writing.
- Students who have not demonstrated participation and/or attendance in their study on a regular basis will be contacted to determine their status of continuing or withdrawing from their studies. TAFE NSW will assist a student to re-commence studies, however if no response is received within times specified, action will be taken to withdraw the enrolment.

Refund of the Student/Concession Fee

A refund of the student fee may be given in the following circumstances:

- Enrolment in a course that has been cancelled by TAFE NSW.
- Overpayment of fees.
- Formal notice of withdrawal is received by the campus, prior to the start of the course.
- The Smart and Skilled fee for the course was paid, and then a fee exemption was granted, dated to the course start date.
- Enrolment in training less than 1 week duration and formal withdrawal notification is received by the campus at least 5 business days prior to the start of the course.
- If, after the course start date, formal advice of withdrawal is received, and future fee instalments have been pre-paid, a refund of the pre-paid fee instalment/s may be applicable.
- Where the third party terminates this agreement, and where future dated fee instalments have been pre-paid, a refund of the pre-paid fee instalment/s may be applicable to the third party, with all remaining unpaid fees becoming the obligation of the student.