

# Terms & Conditions

## Introduction

These terms and conditions apply to the supply of education and training by Skillbuild Pty Ltd (“SkillBuild”) (“we” or “us” or “our”) to you, the Client and/or Student.

These terms and conditions are to be read in conjunction with our Privacy Policy, Complaints Policy and Review of Assessment of Appeals procedure, which are available on our website at [www.skillbuild.edu.au](http://www.skillbuild.edu.au).

## 1 Definitions

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In these terms and conditions:

“**Access and Equity**” has the same meaning as in the Standards and means policies and approaches which are responsible to individual needs to Clients and/or participants whose age, gender, cultural or ethnic background, disability, sexuality, language skills, literacy or numeracy level, unemployment, imprisonment or remote location may present a barrier to access participation and the achievement of suitable outcomes.

“**ACL**” means the Australian Consumer Law.

“**ASQA**” means the Australian Skills Quality Authority.

“**Assessment Decision**” means the trainer’s determination of the student’s competency made at the conclusion of the course.

“**Claim**” means any claims, actions, causes of actions, suits, demands, proceedings, however so arising whether at law, in equity or under any statute.

“**Client**” is the individual, enterprise or organisation that purchases the Services provided by us and who is responsible for the Course Fee.

“**Consumer Guarantees**” means the Consumer Guarantees set out in the ACL.

“**Course**” means the training in a particular subject or academic skill which is operated by us and conducted on one or multiple days.

“**Course Commencement Date**” means the date a course is scheduled to begin and the first day of a multiple day course.

“**Course Details**” means the details about each respective Course including but not limited to the date and time of the Course, location, delivery mode and course code if applicable, published on our website.

“**Course Fee**” means the full fee payable for the Course.

“**Course Outcome**” means a Student’s results in participating in a course, being either satisfactory or unsatisfactory.

“**GST**” means Goods and Services Tax as defined in *A New Tax System (Goods and Services) Tax Act 1999*.

“**SkillBuild Intellectual Property**” means SkillBuild’s registered and unregistered copyright; trade secrets, software, websites, technical data and know-how; registered and unregistered designs; registered and unregistered trademarks; training and information manuals, assessment forms,

worksheets, content, presentation material, study aids and information, and excludes any moral rights or similar personal rights which by law are unassignable.

“**Loss**” means all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

“**Services**” means the training and course delivery by us to the Student to achieve competency in relation to that course.

“**Standards**” means the Standards for Registered Training Organisations 2015 as amended from time to time.

“**Student**” means the individual participating in the Course, who is also the Client if they have purchased the Services, or otherwise has been nominated to participate by the Client.

“**Terms**” or “**Terms and Conditions**” means the terms and conditions set out in this document.

“**Mode of delivery**” means the way in which a course is delivered, being either face to face, or remotely via an online platform, or a combination of both.

“**RTO**” means Registered Training Organisation.

## **1. Details and Acceptance**

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- 1.1. Course Details are published on our website, together with course dates and availability details.
- 1.2. The Client and/or Student is taken to have accepted these terms once they have made the course booking and paid the Course Fee, after which an automated email confirming booking will be sent to the Client.
- 1.3. The Student’s participation in the Course constitutes acceptance of these Terms by the Student.

## **2. Conditions of Course entry**

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- 2.1. To participate in a Course, students must:
  - 2.2.1 be at least 18 years of age, unless specified in the Course Details;
  - 2.2.2 be able to read, write and understand basic English;
  - 2.2.3 Be competent in IT/computer use, including use of software such as Word, Excel and PDFs;
  - 2.2.4 Have the ability to correspond with us via email;
  - 2.2.5 Meet the course pre-requisites as outlined on the website; and
  - 2.2.6 Provide evidence of qualifications on request.

## **3. Service Fees**

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- 3.1. The applicable Course Fee is outlined on our website in the Course Details;
- 3.2. The Course Fee includes all course materials, unless stated otherwise in the Course Details;
- 3.3. Replacement statements issued under clause 8 will incur a fee of \$50 + GST which is payable before the statement is reissued.

#### **4. Payment Terms**

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- 4.1. Payment in full is to be made at the time of enrolment through our website.
- 4.2. Where a payment is made via credit card, surcharges may apply.
- 4.3. We will issue a tax invoice to the Client after the booking is made.

#### **5. Cancellation and Refund Policy**

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- 5.1. All cancellations must be notified in writing to us.
- 5.2. Refunds after cancellation are made in accordance with the following:
  - 5.2.1. Within fourteen (14) days or less from the Course Commencement Date: Refund of fifty percent (50%) of the Course Fee or full credit towards another course to be used within six (6) months of the original course date;
  - 5.2.2. Within seven (7) days or less of the Course Commencement date: No refund or course credit; and
  - 5.2.3. Once the Course has commenced: No refund or course credit.
- 5.3. We reserve our right to apply our discretion in relation to refunds for cancellation which is attributable to compassionate or compelling circumstances.
- 5.4. The Client is not entitled to a refund of the Course Fee in circumstances where the Student:
  - 5.4.1. Fails to attend the Course;
  - 5.4.2. Vacates the Course early;
  - 5.4.3. Does not satisfactorily complete the Course; or
  - 5.4.4. Does not provide evidence of being double vaccinated against Covid-19 in accordance with clause 16.
- 5.5. In the case of compassionate or compelling circumstances, we may, at our sole discretion:
  - 5.5.1. Refund the Course Fee less a \$200 administration fee where a Client or Student cancels before the Course Commencement Date;
  - 5.5.2. Refund \$990 less a \$200 administration fee, plus a credit for the balance of the Course Fee to be used within twelve (12) months from the cancellation date, where a Client or Student cancels after the Course Commencement Date; or
  - 5.5.3. Refund whole or part of the Course Fee, less an administration fee of \$200, where a Client or Student cancels after the Course Commencement Date.
- 5.6. Refunds after the Course Commencement Date will not be granted in circumstances where the Student's attendance or behaviour has been unsatisfactory.
- 5.7. We are not liable for any loss or expense incurred either directly or indirectly to the Client or Student as a result of cancellation under this clause 5, including but not limited to travel and accommodation costs.
- 5.8. We reserve our right to change course dates, content, instructors or Mode of Delivery at any stage prior or during the Course at our discretion.
- 5.9. We reserve our right to cancel or reschedule our courses due to unforeseen circumstances, events beyond our control or government advice/directives. Should this occur, you will be given the opportunity to obtain a full refund or to reschedule the Course.
- 5.10. In the event that we offer an alternative course to attend we reserve the right to impose time lines to complete the course.

#### **6. Fee Protection**

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- 6.1. In rare circumstances, we may collect a Course Fee in excess of \$1,500 in advance of the Course Commencement Date.

## **7. Intellectual Property**

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- 7.1. The material used in our courses is protected by copyright, trade marks or other proprietary rights and might contain content by third parties that is also protected by copyright, trade marks or other proprietary rights.
- 7.2. We grant you a nonexclusive, non-transferable licence to use the material distributed to you in the course provided that it is used for personal use only and not commercial use and that you do not copy, alter, modify or distribute it to a third party without our prior written consent.

## **8. Completion**

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- 8.1. On completion of the course, students will receive either a Statement of Attainment, Certificate of Competency or Certificate of Attendance subject to the Course undertaken and the Course Outcome.
- 8.2. If, on completion of the course the Student has not achieved the required level of competency, at our sole discretion, the Student will be given the opportunity to undertake the Course again to achieve the requisite standard of competency.
- 8.3. If, after two attempts at the Course, the Student does not meet the requisite standard of Competency, they must rebook and pay the Course Fee in the event they want to participate in the Course again.
- 8.4. We reserve our right to revoke a qualification or statement if was obtained by misleading or deceptive conduct or fraud, or at the direction of ASQA.

## **9. SkillBuild Representations and Warranties**

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- 9.1. We warrant that:
  - 9.1.1 We are an RTO approved by ASQA and comply with the Standards;
  - 9.1.2 We hold the necessary licences and insurances required to be an RTO in Australia;
  - 9.1.3 Our trainers and employees hold the necessary qualifications, licences, approvals, insurances, knowledge and industry skills required for the provision of the training course which they deliver; and
  - 9.1.4 We comply with all relevant work, occupational health, safety and welfare standards and regulations as prescribed by legislation.

## **10. Client Responsibilities and Warranties**

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- 10.1. The Student warrants that they:
  - 10.1.1. Have completed any necessary pre-requisites for the Course if required;
  - 10.1.2. Will behave in an orderly and lawful manner and conduct themselves courteously towards Skillbuild trainers, instructors, staff, employees and other students at all times;
  - 10.1.3. Will at all times follow the directions provided by trainers or instructors; and
  - 10.1.4. Will not be under the influence of drugs or alcohol when partaking in a course.
- 10.2. We reserve our right to discontinue participation in our courses or preclude future participation from a Student, Client, or an organisation they are related to due to failure to comply with clause 10.1.

- 10.3. The Client warrants that it has obtained all statutory insurances, including workers compensation insurance, it is required by law to hold in respect of the Student.

## **11. Liability and Indemnity**

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- 11.1. Except in the case of death or personal injury caused by our negligence, our liability under or in connection with these Terms whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the total amount of fees paid by the Client or Student to us in connection with these Terms.
- 11.2. We are not liable to the Client or the Student in contract, tort, negligence, breach of statutory duty or otherwise for any Loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Client or Student of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill. For the purposes of this sub-clause, “consequential loss or damage” means any Loss that does not arise naturally and according to the usual course of things as a result of a breach of these Terms or other event giving rise to such Loss, whether or not such Loss may reasonably be supposed to have been in the contemplation of the Client or Student at the time of booking.
- 11.3. Services that are supplied pursuant to these Terms and Conditions are subject to the ACL. Our liability for a breach of a Consumer Guarantee under the ACL in respect of the Services, to the extent permitted by law, is limited to either of the following at our election:
- 11.3.1 The Supply of the Services again; or
- 11.3.2 The payment of the cost of having the Services supplied again.
- 11.4. Nothing in these Terms excludes or limits any right, remedy, guarantee, term, condition, or warranty implied or imposed by any legislation (including the Consumer Guarantees) which cannot be lawfully limited or excluded.
- 11.5. The Client and Student will indemnify SkillBuild and hold us harmless from and against any and all:
- 11.5.1. Claims made against us for any Loss, damage, liability, injury arising out of:
- 11.5.1.1. Any breach by the Client and/or Student of these Terms;
- 11.5.1.2. Any act or omission of the Client and/or the Student; and
- 11.5.1.3. Any Loss suffered by us as a consequence of any breach by the Client or the Student of these Terms and Conditions.

## **12. Access to Records and Record Keeping**

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- 12.1. The Student can request access to, or request to correct, their personal records by submitting a ‘Student Access to Student File’ authorisation form (available from SkillBuild administration) and by verifying their identity to our satisfaction.
- 12.2. We will action a Student’s request for records within five (5) business days and provide the requested records within a reasonable time thereafter.
- 12.3. We keep secure and confidential records of the Student’s Course Outcome results.

## **13. Appeals**

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- 13.1. The Student has the right to appeal an assessment decision from their Course.
- 13.2. We handle appeals in an efficient manner, ensuring that the process is just and equitable for all students.
- 13.3. Appeals are handled in accordance with our Review of Assessment and Appeals procedure, which provides an outline of the steps to take if the Student does not agree with the appeal procedure and is available on our website at – [www.skillbuild.edu.au](http://www.skillbuild.edu.au).

## 14. Access and Equity

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- 14.1. We are committed to upholding the principles of Access and Equity and equal opportunity. Our services ensure that all Students, regardless of their diversity, are given the opportunity participate in our courses freely, without discrimination and free from bias.
- 14.2. We actively encourage participation in our courses from a diverse range of backgrounds and our instructors and trainers will assist students where appropriate to achieve their best outcome.

## 15. Complaints

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- 15.1. Complaints are addressed fairly, promptly and confidentially should they arise.
- 15.2. We operate a complaint handling procedure which we will use to try to resolve complaints about us, our staff, participants or third parties, which is available on our website at [www.skillbuild.edu.au](http://www.skillbuild.edu.au).

## 16. Covid-19 Vaccination

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- 16.1. All students participating in a Course which is wholly or partly delivered face-to-face must be fully vaccinated (i.e. two doses) against Covid-19 by the earliest date of the first face-to-face session.
- 16.2. Students must provide via email at least two (2) business days before the Course Commencement Date evidence of double vaccination from Covid-19 in the form of a certificate from the Australian Government, immunisation history statement from the Australian Immunisation Register or international equivalent.
- 16.3. If a Student has not been vaccinated for medical reasons, the Student must provide via email at least two (2) business days' before the Course Commencement Date a copy of doctor's certificate to this effect.
- 16.4. We reserve our right to revoke a Student's participation in their Course if they fail to provide proof of vaccination in accordance with clause 16.1 or fail to produce evidence within such further period granted at our sole discretion, in which case the provisions of clause 5.4.4 shall apply.

## 17. Dispute Resolution

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- 17.1. The parties must without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with these Terms prior to commencing any proceedings.
- 17.2. Unless a party has complied with the provisions of this clause, that party may not commence court proceedings or arbitration relating to any dispute arising from these Terms except where that party seeks urgent interlocutory relief, in which case that party need not comply with this clause before seeking the relief.
- 17.3. If the parties are unable to resolve a dispute between themselves, the parties agree that the dispute shall be referred to and resolved by mediation in Melbourne or another place mutually agreed between the parties in accordance with the Australian Disputes Centre (**ADC**) Guidelines for Commercial Mediation (**the Guidelines**).
- 17.4. The parties will agree on the appointment of the mediator. If the parties do not agree on the mediator to be appointed within two (2) Business Days of either party referring the dispute to mediation, then the mediator is to be appointed by the ADC in accordance with the Guidelines.

- 17.5. Each party must pay their own costs in connection with the mediation and half of the mediator's costs and disbursements after receipt of a valid tax invoice for their share, within the timeframe stipulated on the invoice.
- 17.6. If the dispute is not resolved within ten (10) Business Days after the mediator is appointed we can elect to refer the dispute to arbitration administered by the ADC in accordance with the ADR Rules for Domestic Arbitration.
- 17.7. The terms of the Rules and the Guidelines are hereby incorporated into these Terms.

## **18. Privacy Policy**

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Our privacy policy, which sets out how we use your information, is available on our website at [www.skillbuild.edu.au](http://www.skillbuild.edu.au). By using our services, you are agreeing to our privacy policy.

## **19. Events Beyond Control**

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We will not be liable to for any loss caused by any failure to observe these Terms and Conditions where such failure is occasioned by causes beyond our reasonable control including but not limited to by fire, flood, riot, strike, war, restrictions and prohibitions or any other actions by any government or semi government authorities.

## **20. Waiver**

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Failure by us to enforce, or any delay in enforcing, any provision of these Terms and Conditions or to exercise any right or privilege will not be construed as a waiver and the same will continue in force. A waiver of one breach will not constitute a waiver of any other breach.

## **21. Severability**

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Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

## **22. Governing Law and Jurisdiction**

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This agreement will be governed by and construed in accordance with the law in force in Victoria. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria.