

## 1. Definitions

- 1.1 “Organisation” shall mean Autism Association of South Australia Inc. T/A Autism SA its successors and assigns or any person acting on behalf of and with the authority of Autism Association of South Australia Inc. T/A Autism SA.
- 1.2 “Consultant” shall mean and include:
- (a) any other person, firm, company or corporation with whom the Organisation may engage to provide any of the Services the subject of the contract; or
  - (b) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a).
- 1.3 “Customer” shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) and may include any service recipient of Autism SA or a purchaser of Autism SA’s Goods, products and/or Services, be they an individual, organisation or company.
- 1.4 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.5 “Goods” shall mean Goods supplied by the Organisation to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, contract or any other forms as provided by the Organisation to the Customer.
- 1.6 “Services” shall mean all Services supplied by the Organisation to the Customer, consistent with Autism SA’s current constitution and may include (but not be limited to) the provision of resources on loan, consultancy, training, assessment, therapy, education, intervention, direct support to service recipients, information, advice and/or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.7 “Equipment” shall mean Equipment and/or resources supplied on loan by the Organisation to the Customer (and where the context so permits shall include any supply of Goods and/or Services) and is as described on any forms provided by the Organisation to the Customer.
- 1.8 “Price” shall mean the price payable for the Goods as agreed between the Organisation and the Customer in accordance with clause 4 of this contract.

## 2. The Commonwealth Trade Practices Act 1974 (“TPA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

## 3. Acceptance

- 3.1 Any instructions received by the Organisation from the Customer for the supply of Goods and/or Services and/or the Customer’s acceptance of Goods and/or Services supplied by the Organisation shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Organisation.
- 3.4 The Customer shall give the Organisation not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Organisation as a result of the Customer’s failure to comply with this clause.
- 3.5 Goods and/or Services are supplied by the Organisation only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 3.6 Any views or opinions expressed by the Consultant (whether written or verbal) shall not necessarily represent the views and opinions of the Organisation, its employees or agents.

## 4. Price And Payment

- 4.1 At the Organisation’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Organisation to the Customer in respect of Goods and/or Services supplied; or
  - (b) the Organisation’s current price at the date of delivery of the Goods and/or Services according to the Organisation’s current Price list; or
  - (c) the Organisation’s quoted Price (subject to clause 4.2) which shall be binding upon the Organisation provided that the Customer shall accept the Organisation’s quotation in writing within thirty (30) days.
- 4.2 The Organisation reserves the right to change the Price in the event of a variation to the Organisation’s quotation.
- 4.3 At the Organisation’s sole discretion:
- (a) payment shall be due on delivery of the Goods and/or Services; or
  - (b) payment for approved Customers shall be due fourteen (14) days following the date of the invoice.
- 4.4 Time for payment for the Goods and/or Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Organisation.

4.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 5. Delivery Of Goods

- 5.1 At the Organisation's sole discretion delivery of the Goods and/or Services shall take place when:
- (a) the Customer takes possession of the Goods and/or Services at the Organisation's address; or
  - (b) the Customer takes possession of the Goods and/or Services at the Customer's nominated address (in the event that the Goods and/or Services are delivered by the Organisation or the Organisation's nominated carrier); or
  - (c) the Customer takes possession of the Goods and/or Services at an alternative address nominated by the Organisation.
- 5.2 At the Organisation's sole discretion the costs of delivery are:
- (a) included in the Price; or
  - (b) in addition to the Price; or
  - (c) for the Customer's account.
- 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods and/or Services whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods and/or Services as arranged then the Organisation shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods and/or Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.5 The Organisation may deliver the Goods and/or Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.6 The failure of the Organisation to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The Organisation shall not be liable for any loss or damage whatever due to failure by the Organisation to deliver the Goods and/or Services (or any of them) promptly or at all, where due to circumstances beyond the control of the Organisation.

## 6. Risk

- 6.1 If the Organisation retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are lost, damaged or destroyed following delivery but prior to ownership passing to the Customer, the Organisation is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Organisation is sufficient evidence of the Organisation's rights to receive the insurance proceeds without the need for any person dealing with the Organisation to make further enquiries.

## 7. Title

- 7.1 The Organisation and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Organisation all amounts owing for the particular Goods; and
  - (b) the Customer has met all other obligations due by the Customer to the Organisation in respect of all contracts between the Organisation and the Customer.
- 7.2 Receipt by the Organisation 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 the Organisation's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Organisation shall have received payment and all other obligations of the Customer are met; and
  - (b) until such time as ownership of the Goods shall pass from the Organisation to the Customer the Organisation may give notice in writing to the Customer to return the Goods or any of them to the Organisation. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
  - (c) the Organisation shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Customer fails to return the Goods to the Organisation then the Organisation or the Organisation's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
  - (e) the Customer is only a bailee of the Goods and until such time as the Organisation has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Organisation for the Goods, on trust for the Organisation; and
  - (f) the Customer shall not deal with the money of the Organisation in any way which may be adverse to the Organisation; and
  - (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Organisation; and
  - (h) the Organisation can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
  - (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Organisation will be the owner of the end products.

## **8. Equipment**

- 8.1 The Equipment shall at all times remain the property of the Organisation and is returnable on demand by the Organisation. In the event that the Equipment is not returned to the Organisation in the condition in which it was delivered the Organisation retains the right to charge the Price of repair or replacement of the Equipment.
- 8.2 The Customer shall;
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.
  - (b) not alter or make any additions to the Equipment, including but without limitation, altering, make any additions to, defacing or erasing any identifying brand, mark or number on or in the Equipment or in any other manner interfere with the Equipment.
  - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Organisation to the Customer.
- 8.3 The Customer accepts full responsibility for the safekeeping of the Equipment and further agrees not to use the Equipment, nor permit it to be used, in such a manner as would permit an insurer to decline any claim.

## **9. Defects**

- 9.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Organisation of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Organisation an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Organisation has agreed in writing that the Customer is entitled to reject, the Organisation's liability is limited to either (at the Organisation's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (CWlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase Price of the Goods, or repair of the Goods, or replacement of the Goods.

## **10. Errors and Omissions**

- 10.1 The Customer shall evaluate the Services on completion and shall within twenty-four (24) hours of completion (time being of the essence) notify the Organisation of any alleged defect, errors, omissions or failure to comply with the description or quote. The Customer shall afford the Organisation an opportunity to investigate the Services within a reasonable time following delivery if the Customer believes the Services are defective in any way. If the Customer shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or non-compliance. For defective Services, which the Organisation has agreed in writing that the Customer is entitled to reject, the Organisation's liability is limited to either (at the Organisation's discretion) replacing the Services or rectifying the Services, except where the Customer has acquired Services as a consumer within the meaning of the Trade Practices Act 1974 (CWlth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase Price of the Services, or rectification of the Services, or replacement of the Services.

## **11. Returns**

- 11.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 9.1; and
  - (b) the Organisation has agreed in writing to accept the return of the Goods; and
  - (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
  - (d) the Organisation will not be liable for Goods which have not been stored or used in a proper manner; and
  - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 11.2 Returned goods may (at the Organisations sole discretion), incur restocking and handling fees.

## **12. Warranty**

- 12.1 To the extent permitted by statute, no warranty is given by the Organisation as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Organisation shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

## **13. Intellectual Property**

- 13.1 Where the Organisation has designed, drawn or written Goods and/or Services for the Customer, then the copyright in those designs and drawings and documents shall remain vested in the Organisation, and shall only be used by the Customer at the Organisation's discretion.
- 13.2 The Customer warrants that all designs or instructions to the Organisation will not cause the Organisation to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Organisation against any action taken by a third party against the Organisation in respect of any such infringement.

**14. Default & Consequences of Default**

- 14.1 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 one half percent (2.5%) per calendar month (and at the Organisation’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 In the event that the Customer’s payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Organisation.
- 14.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Organisation from and against all costs and disbursements incurred by the Organisation in pursuing the debt including legal costs on a solicitor and own client basis and the Organisation’s collection agency costs.
- 14.4 Without prejudice to any other remedies the Organisation may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Organisation may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under the terms and conditions. The Organisation will not be liable to the Customer for any loss or damage the Customer suffers because the Organisation has exercised its rights under this clause.
- 14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.6 Without prejudice to the Organisation’s other remedies at law the Organisation shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Organisation shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to the Organisation becomes overdue, or in the Organisation’s opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

**15. Cancellation**

- 15.1 The Organisation may cancel any contract to which these terms and conditions apply or cancel delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Customer. On giving such notice the Organisation shall repay to the Customer any sums paid in respect of the Price. The Organisation shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 In the event that the Customer cancels delivery of Goods and/or Services less than twenty-four (24) hours prior to the agreed delivery date of the Goods and/or Services the Customer shall be liable for any loss incurred by the Organisation (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15.3 Should the Customer cancel delivery of the Goods and/or Services described as a major or minor event, the following cancellation schedule shall apply:
  - (a) major event (attendee numbers greater than (or equal to) one hundred (100) people):

Cancellation thirty (30) days or more prior to event	Full refund
Cancellation fifteen (15) to thirty (30) days prior to event	Fifty percent (50%) refund
Cancellation less than fifteen (15) days prior to event	Nil refund

(b) minor event (attendee numbers less than one hundred (100) people):

Cancellation ten (10) days or more prior to event	Full refund
Cancellation five (5) to ten (10) days prior to event	Fifty percent (50%) refund
Cancellation less than five (5) days prior to event	Nil refund

**16. Privacy Act 1988**

- 16.1 The Customer and/or the Guarantor/s agree for the Organisation to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Organisation.
- 16.2 The Customer and/or the Guarantor/s agree that the Organisation may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
- 16.3 The Customer consents to the Organisation being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Customer agrees that personal credit information provided may be used and retained by the Organisation for the following purposes and for other purposes as shall be agreed between the Customer and Organisation or required by law from time to time:

- (a) provision of Goods and/or Services; and/or
  - (b) marketing of Goods and/or Services by the Organisation, its agents or distributors in relation to the Goods and/or Services; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods and/or Services; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods and/or Services.
- 16.5 The Organisation may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

**17. General**

- 17.1 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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia and are subject to the jurisdiction of the courts of South Australia.
- 17.3 The Organisation shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Organisation of these terms and conditions.
- 17.4 In the event of any breach of this contract by the Organisation the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Services.
- 17.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Organisation.
- 17.6 The Organisation may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.7 The Customer agrees that the Organisation may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Organisation notifies the Customer of such change.
- 17.8 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.
- 17.9 The failure by the Organisation to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Organisation's right to subsequently enforce that provision.