

## 1. Definitions

- 1.1 "Appointment" means a delivery date for the Services, or series of delivery dates, that is requested by the Customer and agreed by the Organisation, or as otherwise nominated by the Organisation and agreed by the Customer.
- 1.2 "Customer" means any individual or organisation that requests the supply of Goods or Service by the Organisation to either the requestor, or another party on whose behalf the requestor is acting.
- 1.3 "Equipment" means equipment and/or resources supplied on loan by the Organisation to the Customer to enable it to receive the benefit of the Services.
- 1.4 "Event" means a training and development activity (e.g. seminar, conference, workshop), fundraising activity or other event organised by Autism SA in consideration of the payment of a Price.
- 1.5 "Goods" means any goods to be supplied by the Organisation to the Customer, as requested by the Customer and agreed by the Organisation, including via a Quotation issued by the Organisation that is accepted by the Customer.
- 1.6 "Intellectual Property Rights" means any and all intellectual and industrial property rights anywhere in the world (including present and future intellectual property rights) including (but not limited to) rights in respect of or in connection with:  
(a) any related confidential information, know-how or any right to have information kept confidential;  
(b) copyright (including future copyright and rights in the nature of or analogous to copyright); and  
(c) inventions (including patents),  
whether or not existing at the date of this document and whether or not registered or registerable and includes any and all variations, modifications or enhancements to each of them together with any application or right to apply for registration of those rights and includes all renewals and extensions.
- 1.7 "NDIS Service" means the provision of disability supports and services funded by the National Disability Insurance Scheme
- 1.8 "Offer" has the meaning set out in clause 3.2.
- 1.9 "Organisation" means Autism Association of South Australia (ABN 98 164 545 215) trading as Autism SA, its successors and assigns or any person acting on behalf of and with the authority of Autism Association of South Australia.
- 1.10 "Perfected" has the meaning set out in the PPSA.
- 1.11 "PPSA" means the *Personal Property Securities Act 2009* (Cth) and any regulations made under it.
- 1.12 "PPSR" means the Personal Property Securities Register established by the PPSA.
- 1.13 "Price" shall mean the price specified in a Quotation issued by the Organisation to the Customer, and if no Quotation is issued, shall mean the price specified for the relevant Goods and/or Services as specified on the Organisation's standard price list current as at the date of supply to the Customer.
- 1.14 "Quotation" means a quotation issued by the Organisation to the Customer for the supply of Goods or Services.
- 1.15 "Security Agreement" has the meaning set out in the PPSA.
- 1.16 "Security Interest" has the meaning set out in the PPSA
- 1.17 "Services" means any services to be supplied by the Organisation to the Customer, as requested by the Customer and agreed by the Organisation, including via a Quotation issued by the Organisation that is accepted by the Customer.
- 1.18 "Tailored Support Package" means a series of Appointments for Autism SA to deliver to either a Customer, or a third party at the request of a Customer.
- 1.19 "Tailored Training Package" means training for Autism SA to deliver to either a Customer, or a third party at the request of a Customer.

## 2. The Competition and Consumer Act 2010 (Cth) ("CCA") 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 CCA or the FTA in each of the States and Territories of Australia (including but not limited to the Fair Trading Act 1987 (SA)), except to the extent permitted by those Acts where applicable.

## 3. Requests, Acceptance and Contracts

- 3.1 These Terms and Conditions of Trade are an invitation by the Organisation for Customers to submit offers to have the Organisation supply Goods or Services on the terms and conditions set out in this document.
- 3.2 By requesting the Organisation to provide Goods or Services (including orally, by the submission of an acceptance of a Quotation issued by the Organisation, the submission of any forms including order forms to the Organisation or in any other way), the Customer is making an offer to the Organisation to have the Organisation supply the relevant Goods and Services to the Customer on the terms and conditions set out in this document, to the exclusion of all other terms, conditions and representations ("Offer").
- 3.3 If a Quotation is issued by the Organisation, to make a valid Offer the Customer must accept the quotation in writing Quotation within 30 days of the date of issuance of the Quotation by the Organisation. If an acceptance of Quotation is submitted after this period, it will not be a valid Offer but can be accepted by the Organisation in its discretion.
- 3.4 Each Offer submitted by a Customer to the Organisation for the supply of Goods or Services will be deemed to be accepted by the Organisation unless the Organisation notifies the Customer to the contrary.

- 3.5 The Organisation will use its reasonable endeavours to advise Customers of the rejection of an offer within 5 Business Days of an Offer being received, and notify the reasons for rejection.
- 3.6 A contract between the Organisation and the Customer for the supply by the Organisation of the relevant Goods and Services, and their receipt by the Customer, on the terms and conditions set out in this document to the exclusion of all others, will come into existence on the date the Organisation accepts the Offer issued by the Customer. No contract between the parties which has been created can be cancelled by the Customer except with the prior written consent of the Organisation, on such terms and conditions as the Organisation may require, or as otherwise permitted by clause 19.2.

#### **4. Change of Details**

- 4.1 Without limiting or affecting clause 23.10 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). In the event of an actual or proposed change of ownership, the Organisation can, in its discretion, elect to terminate its contract with the Organisation with immediate effect, by notice in writing to the Customer. 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.

#### **5. Price and Payment**

- 5.1 The Customer acknowledges and agrees that Quotations are prepared and issued by the Organisation on the basis of, and in reliance upon, the information provided by the Customer
- 5.2 If a Quotation specifying a Price has been issued by the Organisation and accepted by the Customer, the Customer acknowledges and agrees that the provision of incomplete or misleading information by the Customer, unforeseen circumstances, misinterpretations, variations and similar events may result in charges additional to the Price set out in the Quotation being payable by the Customer for the relevant Goods and/or Services, and the Customer agrees to pay any such additional amounts to the Organisation, in full, and acknowledges that such amounts will form part of the Price due to the Organisation by the Customer.
- 5.3 Unless otherwise agreed by the Organisation in writing, payment of the Price, in full and without deduction is due on the earlier of:
- (a) the date of submission of an Offer by the Customer, if the Organisation makes point-of-sale facilities available to the Customer;
  - (b) the date of delivery of the supply of the Goods and/or Services by the Organisation; or
  - (c) Seven (7) calendar days following the date of the invoice issued by the Organisation.
- 5.4 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit (electronic funds transfer), or by direct debit, or by any other method requested by the Customer and agreed by the Organisation.

#### **6. GST**

- 6.1 In this clause:
- (a) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
  - (b) GST Law has the same meaning given to that expression in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 6.2 Unless otherwise expressly stated, all Prices or other sums payable or consideration to be provided under this document are exclusive of GST.
- 6.3 If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under this Document, the recipient will pay to the supplier an amount equal to the GST payable on the supply.
- 6.4 The recipient will pay the amount referred to in clause 6.3 in addition to and at the same time that the consideration for the supply is to be provided under this document.
- 6.5 The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 6.3. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.
- 6.6 If an adjustment event arises in respect of a taxable supply made by a supplier under this document, the amount payable by the recipient under clause 6.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- 6.7 Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
  - (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

**7. Delivery of Goods**

- 7.1 Unless the Organisation otherwise agrees in writing, the Customer is solely responsible for payment of all costs associated with delivery of the Goods to the Customer. These delivery costs are in addition to and payable at, the same time as the Price, unless the Organisation notifies the Customer otherwise.
- 7.2 The Organisation will use its reasonable endeavours to deliver the Goods requested by the customer in an Offer within a reasonable period following acceptance of the relevant Offer.
- 7.3 The Customer shall make all arrangements necessary to accept delivery of the Goods whenever they are tendered for delivery by the Organisation or its nominated carrier. In the event that the Customer is unable to accept delivery of the Goods, then the Organisation shall be entitled to charge a reasonable fee for re-delivery.
- 7.4 Delivery of the Goods to a third party nominated by the Customer or purporting to act on behalf of the Customer is deemed to be delivery to the Customer for the purposes of this document.
- 7.5 The Organisation may deliver the Goods by separate instalments. Each separate instalment shall be invoiced by the Organisation and paid for by the Customer in accordance with these terms and conditions.
- 7.6 The failure of the Organisation to deliver Goods shall not entitle either party to treat any contract in place between them as repudiated.
- 7.7 Without limiting or affecting clause 23.7, the Organisation shall not be liable for any loss or damage whatsoever resulting from a 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.

**8. Risk**

- 8.1 Risk of damage to, or destruction or loss of the Goods will pass to Customer at the time of delivery to the Customer.
- 8.2 If any of the Goods are lost, damaged or destroyed following delivery but prior to title passing to the Customer in accordance with clause 9, 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.

**9. Title**

- 9.1 The Organisation and the Customer agree that notwithstanding delivery and the passing of risk in the Goods to the Customer as stated in clause 8.1, title to, and ownership of, the Goods shall not pass from the Organisation to the Customer unless and until:
- (a) the Customer has paid the Organisation all amounts owing for the particular Goods, including all sums payable in respect of their delivery and GST as applicable; 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.
- 9.2 Receipt by the Organisation of any form of payment other than cash shall not be deemed to be payment by the Customer until that form of payment has been honoured, cleared or recognised by the Organisation or its bankers, and until then the Organisation's ownership of the Goods shall continue.
- 9.3 It is further agreed that until such time as full property and ownership of the Goods passes to the Customer in accordance with clause 9.1, and while the Goods remain in the Customer's full control and possession:
- (a) the Customer holds the Goods as the Organisation's fiduciary agent and bailee;
  - (b) the Customer must keep the Goods properly stored, protected and insured;
  - (c) the Goods shall be kept separate and identifiable as the property of the Organisation until receives full payment for them, and all other obligations of the Customer are met; and
  - (d) 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 through payment of the amounts due, and fulfilment of its obligations, shall cease; and
  - (e) 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 third party where the Goods are located, as an authorised invitee and take possession of the Goods; and
  - (f) the Customer is only a bailee of the Goods, and must not deal with the Goods except in the ordinary course of its business, 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 in the ordinary course of its business, up to and including the amount the Customer owes to the Organisation for the Goods, on trust for the Organisation; and
  - (g) the Customer shall not deal with the money of the Organisation in any way which may be adverse to the Organisation; and
  - (h) 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, except in the ordinary course of its business and subject always to clause 9.3(f); and
  - (i) 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
  - (j) 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.

**10. PPSA**

- 10.1 The Customer acknowledges that until such time as full title to Goods passes to the Customer under clause 9.1, this document constitutes a Security Agreement for the purposes of the PPSA, and the Organisation has a Security Interest in the Goods.
- 10.2 Without limiting clause 23.11, the Customer agrees to do such things as the Organisation may require from time to time to ensure that any Security Interest of the Organisation arising from or connected with this document is Perfected under the PPSA for whatever period the Organisation determines in its sole discretion, including signing documents and providing the Organisation with all further information required to enable the Organisation to register its Security Interests on the PPSR, and to otherwise protect the Organisation's position under the PPSA.
- 10.3 The Customer must keep the Organisation fully informed of all relevant information regarding it and its activities, including by providing not less than 14 calendar days' notice in writing of any proposed change in its name or contact details, and immediately advising the Organisation of material changes in its business activities.
- 10.4 The Customer agrees to indemnify the Organisation for all expenses incurred by the Organisation in registering its Security Interests on the PPSR, and will reimburse the Organisation for all such expenses immediately upon demand.
- 10.5 The Customer waives its rights under section 157 of the PPSA to receive a notice in relation to the registration events to which section 157(3)(a) of the PPSA applies, including without limitation, the right to receive a copy of a verification statement confirming registration of a financing statement or financing change statement relating to the Security Interest created by this document.
- 10.6 The Customer agrees that nothing in sections 118, 121(4), 125, 130, 142 or 143 of the PPSA will apply to this document or any Security Interest in the Goods created by this document, and waives its rights to receive any of the following documents:
- (a) a notice of removal of an accession under section 95 of the PPSA;
  - (b) a notice of an intention to seize collateral under section 123 of the PPSA;
  - (c) a notice of a disposal of collateral under section 130 of the PPSA;
  - (d) a statement of account under section 132(3)(d) of the PPSA;
  - (e) a statement of account under section 132(4) of the PPSA;
  - (f) a notice of retention of collateral under section 135 of the PPSA; and
  - (g) any notice from the Organisation under each of the provisions listed in section 144 of the PPSA.

**11. Equipment**

- 11.1 Any Equipment supplied to the Customer 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 will in its discretion charge the costs of repairing or replacing the Equipment to the Customer, and the Customer must pay such amounts to the Organisation immediately upon demand.
- 11.2 The Customer shall:
- (a) keep the Equipment in its own possession and control at all times, and shall not sell, grant a licence over, create any encumbrance in respect of, or otherwise transfer or assign the benefit of the Equipment to any third party;
  - (b) not have or be entitled to claim any form of lien over the Equipment.
  - (c) 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;
  - (d) keep the Equipment, complete with all parts and accessories, clean and in good order in the same condition as at the time of delivered (fair wear and tear excepted), and shall comply with any maintenance schedule as advised by the Organisation to the Customer.
- 11.3 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.
- 11.4 The Customer agrees to indemnify, defend and hold the Organisation harmless from and against any and all claims, demands, suits, causes of action, damages and legal fees (on a solicitor-own client basis) or expenses or costs whatsoever arising, directly or indirectly, from any use or other dealings with the Equipment by the Customer, and unconditionally frees, releases and discharges the Organisation and its officers, agents, contractors and employees from any claim or cause of action arising in connection with such matters

## **12. Defects in Goods**

- 12.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (with time being of the essence for the purposes of this clause) notify the Organisation in writing of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Organisation will inspect the Goods within a reasonable time following receipt of the Customer's notice of an alleged defect or shortage in quantity, and if the Organisation agrees in writing that the defect or shortage notified by the Customer is valid, the sole and exclusive remedy of the Customer (but without limiting or affecting clause 16.3) will be one of the following, as determined by the Organisation in its sole discretion:
- (a) replacing the affected Goods, or supplying an additional amount to make up any shortfall in quantity; or
  - (b) repairing the Goods
- 12.2 If the Customer does not submit any notification in writing to the Organisation in accordance with the requirements of clause 12.1, the Goods will be deemed to be free from any defects or damage, in conformance with any supplied descriptions or samples, and correct in quantity, to the extent permitted by law and without affecting clause 16.3.

## **13. Services**

- 13.1 The Organisation will use its reasonable endeavours to perform the Services at the Appointment(s), or within such other timeframe as the parties may agree.
- 13.2 The Customer acknowledges and agrees that despite clause 13.1, any dates for the performance of the Services are approximate only, and will not be binding on the Organisation. The Organisation will use its reasonable endeavours to keep the Customer informed of any delays and any revised delivery dates.
- 13.3 The Organisation will perform the Services to professional standards, with reasonable skill and care, using appropriately qualified staff and personnel and suitable equipment (which may include Equipment) and resources.
- 13.4 The Customer agrees to provide the Organisation with any assistance requested from the Customer in connection with the provision of Services (including but not limited to information, data, materials, equipment, resources and personnel) in a timely fashion.

## **14. Errors and Omissions**

- 14.1 The Customer shall evaluate the Services and their output on completion and shall within twenty-four (24) hours of completion (time being of the essence for the purposes of this clause) notify the Organisation in writing of any alleged failure to render Services with due care and skill or fitness for a particular purpose made known by the Customer to the Organisation in writing prior to the time of supply. The Organisation will review the provision of Services and Service output within a reasonable time following receipt of the Customer's notice of an alleged failure to supply with due care or skill, or failure to be fit for the specific purpose notified by the Customer to the Organisation prior to supply, and if the Organisation agrees in writing that the claim notified by the Customer is valid, the sole and exclusive remedy of the Customer (but without limiting or affecting clause 16.3) will be one of the following, as determined by the Organisation in its sole discretion:
- (a) a refund of the Price paid for the Services (or no charge, if the Price is yet to be paid);
  - (b) the supply of the Services again; or
  - (c) payment of the cost of having the Services supplied again.
- 14.2 If the Customer does not submit any notification in writing to the Organisation in accordance with the requirements of clause 12.1, the Services will be deemed to have been properly supplied by the Organisation, with due care and skill, and the Services and their output will be considered to be fit for all relevant purposes, including those specifically notified by the Customer to the Organisation, to the extent permitted by law and without affecting clause 16.3.

## **15. Warranty**

- 15.1 To the extent permitted by law, no express warranty of any kind is given by the Organisation in relation to any of the Goods or Services; 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 Services, or any part thereof however arising, to the fullest extent legally permitted.
- 15.2 Accordingly, to the fullest extent permitted by law the Organisation expressly disclaims any express or implied term, condition, guarantee, statutory or other warranty relating to the Goods and Services it supplies to Customers, including but not limited to warranties and guarantees of acceptability, compliance with description, correspondence with sample, merchantability, fitness for purpose, rendering with due care and skill, availability of spare parts or repair facilities, achievement of result or provision within a reasonable time, and makes no representations to the Customer regarding any of these matters.
- 15.3 Despite clause 15.2, the Organisation acknowledges that the CCA and FTAs imply particular non-excludable guarantees, warranties and conditions into particular agreements for the supply of goods and services, which cannot be excluded, restricted or modified ("Non-Excludable Terms"). It is agreed by the parties that:
- (a) the Organisation does not exclude, restrict or modify any of the Non-Excludable Terms;
  - (b) nothing in this clause or this document is intended to exclude, or is to be interpreted as excluding, any Non-Excludable Term that cannot lawfully be excluded or disclaimed by the Organisation; and
  - (c) nothing in this document limits any remedies which may be available to the Customer at law and which cannot lawfully be excluded by the Organisation, including in respect of any breach of a Non-Excludable Term which may be applicable.

**16. Exclusion and Limitation of Liability**

- 16.1 To the fullest extent permitted by law, and unless otherwise expressly stated in this document, the Organisation excludes all liability towards the Customer in respect of all claims made by the Customer under or in connection with this document (whether arising out of breach of contract, negligence or any other tort, under statute or otherwise) for any loss of profit, revenue, data, contracts, goodwill or business, or any interruption to the business of the Customer, or any consequential, indirect, special, punitive or incidental damages.
- 16.2 Despite clause 16.1, to the fullest extent permitted by law, the total liability of the Organisation to the Customer in respect of all claims made by the Customer under or in connection with this document (whether arising out of breach of contract, negligence or any other tort, under statute or otherwise) will not in aggregate exceed the amount of the Price paid or payable by the Customer under this document or any contract as at the date of the relevant claim or loss arising.
- 16.3 Despite clauses 16.1 and 16.2, and notwithstanding anything else to the contrary in this document, to the extent the Organisation is unable to fully exclude its liability pursuant to applicable law, and to the extent that it is entitled to do so, the Organisation's liability to the Customer for a breach of any of the Non-Excludable Terms is limited to any one of the following, at the option of the Organisation:
- (a) in the case of goods (including the Goods) - replacement of the goods or the supply of equivalent goods; repair of the goods; payment of the cost of replacing the goods or acquiring equivalent goods or payment of the costs of having the goods repaired; and
  - (b) in the case of services (including the Services) - the supply of the services again or payment of the cost of having the services supplied again.

**17. Intellectual Property**

- 17.1 Except as expressly provided for, nothing in this document transfers to a party ownership of, or grants any entitlement to, any pre-existing Intellectual Property Rights of the other party.
- 17.2 The Customer grants to the Organisation a limited, non-exclusive, royalty-free licence to use any relevant pre-existing Intellectual Property Rights of the Customer which are required for the Organisation to properly perform the Services in accordance with its obligations under this document.
- 17.3 Nothing in this document grants to the Customer any right or entitlement to any pre-existing Intellectual Property Rights which are used by the Organisation to provide the Services, except to the extent strictly necessary for the Customer to use and enjoy the output of the Services.
- 17.4 The Organisation is the sole owner of all Intellectual Property Rights created or developed in the course of providing the Services and supplying the Goods, and nothing in this document grants to the Customer any right or entitlement to any such Intellectual Property Rights, except to the extent strictly necessary for the Customer to use and enjoy the output of Services as permitted by this document.
- 17.5 The Customer warrants that all designs or instructions to the Organisation will not cause the Organisation to infringe any Intellectual Property Rights of a third party, and the Customer agrees to indemnify, defend and hold harmless the Organisation against any action taken by a third party against the Organisation in respect of any such alleged infringement.

**18. Default & Consequences of Default**

- 18.1 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable to reimburse any dishonour fees incurred by the Organisation, and shall pay these to the Organisation immediately upon demand.
- 18.2 If the Customer defaults in payment of any invoice or amounts 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 debt collection agency costs.
- 18.3 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) under this document, 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, with immediate effect, by notice in writing to the Customer. 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.
- 18.4 Without prejudice to the Organisation's other remedies at law the Organisation shall be entitled to (by notice in writing and with immediate effect) cancel all or any part of any Offer submitted by the Customer that has been accepted by the Organisation but which remains unfulfilled, and any contract in place between the parties, 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;
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer; or
  - (d) the Customer ceases to carry on business, or threatens to do so.

**19. Cancellation**

- 19.1 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 in its discretion, by giving notice to the Customer in writing. On giving such notice the Organisation shall repay to the Customer any sums paid in respect of the Price or offer a substitution. The Organisation shall not be liable for any loss or damage whatever arising from such cancellation.
- 19.2 In the event that the Customer cancels an Appointment with less than twenty-four (24) hours' notice prior to an Appointment, or fails to attend an Appointment and provides no cancellation notification, the Customer will incur and be liable to pay to the Organisation a cancellation fee of \$100 or the full Price of the Service if less than \$100. Not applicable for NDIS Services. The amounts listed in clause 19.6 apply to cancellation of Appointments that are Events, Tailored Support Packages or Tailored Training Packages.
- 19.3 In the event that the Customer fails to attend three consecutive Appointments, Autism SA may reallocate any future Appointments to another customer.
- 19.4 There may be exceptional circumstances where cancellation fees may be waived. The decision as to whether or not a fee will be waived rests solely with Organisation management, and will be communicated in writing to the Customer. Administrative staff and Service delivery staff do not have authority to waive cancellation fees on behalf of the Organisation.
- 19.5 If a cancellation fee has been charged, it must be paid within seven (7) days of receipt of invoice or future Services and Appointments may be cancelled by the Organisation.
- 19.6 Should the Customer cancel delivery of an Event, a Tailored Support Package or a Tailored Training Package the following cancellation fees shall apply:

Cancellation fourteen (14) days or more prior to delivery	Full refund minus an administration fee of 20% of the Price
Cancellation seven (7) to fourteen (14) days prior to delivery	Fifty percent (50%) refund
Cancellation less than seven (7) days prior to delivery	Nil refund

Substitution for attendance at Events and/or rescheduling of Appointments individually or as part of Tailored Support Package or a Tailored Training Package may be considered.

**20. Privacy Act 1988**

- 20.1 In this clause:
  - (a) "Act" means the *Privacy Act 1988* (Cth);
  - (b) "Personal Information" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
  - (c) "Privacy Laws" means:
    - (i) the Act, and any similar or equivalent legislation that applies to the Organisation or the Customer; and
    - (ii) the Australian Privacy Principles prescribed by the Act, and any approved privacy code or requirements that apply to the Organisation or the Customer.
- 20.2 Each party agrees that it will:
  - (a) observe the Privacy Laws in respect of all Personal Information that is collected or otherwise dealt with by it in the course of this document;
  - (b) promptly follow any reasonable direction of the other party in relation to the treatment of Personal Information held by that party;
  - (c) only use and disclose Personal Information that is collected or otherwise dealt with by it for the purpose of furthering any necessary functions and activities of the Customer or the Organisation as relevant, and not for any other purpose; and
  - (d) ensure that all Personal Information is secure and take all reasonable steps to protect Personal Information held by it from misuse or loss or any unauthorised access, modification or disclosure.

**21. Dispute Resolution**

- 21.1 If any dispute or difference arises in connection with this document the parties will use their best endeavours to resolve the dispute or difference in accordance with this clause before initiating any court proceedings.
- 21.2 Any dispute or difference arising in connection with this document will be referred in writing to a senior representative appointed by each party who will attempt to resolve the dispute by negotiation in good faith within 14 days of one party notifying the other of the existence of the dispute.
- 21.3 If the senior representatives fail to resolve the dispute, the parties agree to refer the dispute to a mediator to be mutually agreed, or in default of agreement within 5 calendar days of either party requesting the other to agree a mediator, to be appointed by the President for the time being of the Law Society of South Australia.
- 21.4 The mediation is to be held within 7 calendar days of the appointment of the mediator, and the parties will pay equal shares of the mediator's fees, unless otherwise agreed.

- 21.5 If the mediation does not proceed within the agreed timetable or is not successful in resolving the dispute, each party is free to commence legal proceedings to resolve the dispute.
- 21.6 Nothing in this clause prevents a party from seeking urgent interlocutory relief.

## **22. Confidentiality**

- 22.1 The Customer must keep the Confidential Information of the Organisation confidential, and must not use or disclose the Confidential Information of the Organisation for any purpose other than that which the information was disclosed.
- 22.2 The obligations of confidence under this document do not apply to any information that:
- (a) is in the public domain (other than through any breach of this document);
  - (b) the receiving party can prove was known to it at the time of disclosure by the disclosing party, free from any obligation of confidence; or
  - (c) a party is required by law or the rules of any stock exchange to disclose.
- 22.3 The obligations of confidentiality under this document survive the expiration or termination of this document.
- 22.4 The Customer may only disclose the Organisation's Confidential Information to those of its employees, contractors or professional advisers who need to know the information and who are aware of the confidential nature of the information.
- 22.5 On written notice from the Organisation as the owner of any Confidential Information, the Customer or any other recipient of that information will immediately destroy or deliver to the Organisation all Confidential Information in a recorded form (including any copies of that information) which is in the recipient's possession or control.
- 22.6 No party may make any public statement or make any representation in relation to this document or any part to it without the prior written consent of the other.

## **23. General**

- 23.1 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.
- 23.2 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 exclusive jurisdiction of the courts of South Australia.
- 23.3 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.
- 23.4 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.
- 23.5 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.
- 23.6 The Organisation may license or sub-contract all or any part of its rights and obligations, including the provision of Goods and Services, to a third party without the Customer's consent. Any views or opinions expressed by the any third party engaged by the Organisation (whether written or verbal) shall not necessarily represent the views and opinions of the Organisation, its employees, agents or officers, and must not be regarded by the Customer as such.
- 23.7 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, or such future date as the Organisation may specify.
- 23.8 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. However, this clause will not apply to any obligation to pay money.
- 23.9 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.
- 23.10 The Customer must not assign, novate or transfer any of its rights or obligations under this document without the prior written consent of the Organisation, which will be granted in its sole and absolute discretion.
- 23.11 The Customer will promptly do all things required by law or reasonably requested by the Organisation to give effect to this document or any contract in place between the parties.
- 23.12 No right or obligation of any party will merge on completion of any transaction under this document. All rights and obligations under this document survive the execution and delivery of any transfer or other document which implements any transaction under this document.
- 23.13 Each party will pay its own costs in connection with the negotiation, preparation and execution of this document and any contract.



- 23.14 Any notice given under this document must be in writing and signed by or for the sender and delivered by post, hand, email or fax to such address(es) as may be specifically notified by a party in writing from time to time, and otherwise the last known address of the recipient. A notice or other communication delivered under this document will be deemed to be given if:
- (a) personally delivered, upon delivery;
  - (b) mailed, 2 business days after the date of posting (whether received or not);
  - (c) sent by email, at the time of sending provided that the sender receives automated or personalised confirmation that the email has been successfully delivered to an email system accessible to the addressee; or
  - (d) sent by facsimile, at the time of transmission provided that the sender's machine produces a transmission report confirming the successful transmission of the total number of pages of the notice.
- 23.15 This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- 23.16 The relationship between the parties is and will remain that of independent contractors, and nothing in this document constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary