

## **TERMS AND CONDITIONS OF TRAINING**

### **1. DEFINITIONS**

In these Terms and Conditions, unless the context or subject matter otherwise require:

**Claim** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent;

**Contract** means this legally binding agreement entered between you and Major for the supply of Training comprising these Terms and Conditions and any Quotation delivered by Major to you for the supply of that Training;

**Debt** means any and all moneys due and owing by you to Major whether in relation to one or more Contracts and includes, without limitation, any Overdue Amounts;

**Equipment** means any equipment, plant, machinery, tools and/or spare parts that a Trainee comes into contact with during his or her Training;

**Major (we/us/our)** means Ashtrail Pty Ltd ACN 057 404 074 and its servants and agents;

**Obligation** means any express or implied legal, equitable, contractual, statutory or other obligation, promise, agreement, covenant, commitment, duty, undertaking or liability;

**Overdue Amount** means any amount of money that remains unpaid when Training commences;

**Parties** means you and Major;

**Personal Information** has the definition attributed to it under the *Privacy Act 1988* (Cth);

**Quotation** means a verbal or written offer from Major to you for the supply of Training to you;

**Right** means any legal, equitable, contractual, statutory or proprietary right, chose in action, power, authority, benefit, privilege, remedy, or discretion;

**Special Condition** means any condition set out in writing in signed by both parties that apply to the Contract;

**Terms and Conditions** means the terms and conditions set out in this document and includes the Special Conditions; and

**Client/Trainee (you/your)** means the person or entity to whom Training is provided from time to time and that person or entity's servants and agents;

**Training** means any training, tuition, instruction, demonstration or examination provided by us to you including, without limitation, that required for:

- (i) the licenced, qualified, competent or safe operation of any equipment, plant, machinery, tools or motor vehicle;
- (ii) the licenced, qualified, competent or safe carrying out of tasks or the supervision thereof; or
- (iii) managing a business,

within the transport, construction, waste management, mining or other industry and whether forming part of an educational course, traineeship, apprenticeship or otherwise.

### **GENERAL**

When you enter into a Contract with Major you agree that:

- (a) you have read and understood these Terms and Conditions and you agree to be bound by them;
- (b) these Terms and Conditions apply to every transaction for the supply of Training; and
- (c) any variation to a Contract or these Terms and Conditions must be made with the consent of both Parties and must be in writing and signed by both Parties.

### **QUOTATIONS**

- (a) A Quotation may be delivered by Major to you for the supply of Training to you.
- (b) If you are an entity, you must deliver a Purchase Order to Major before accepting a Quotation and before commencement of the Training identified in the Quotation.
- (c) A Quotation will lapse if:
  - (i) thirty days after the Quotation has been delivered to you, the Quotation has not been accepted by you; or
  - (ii) after sixty days of the Quotation being accepted by you, the Training identified in the Quotation has not commenced, at which point Major is entitled to review its Quotation at its discretion.
- (d) You may accept a Quotation by:
  - (i) written notice to Major; or
  - (ii) verbally communicating your acceptance to Major personnel.

### **ENTIRE AGREEMENT**

- (a) No other terms or conditions apply to a Contract between the Parties.
- (b) These Terms and Conditions and the details contained in a Quotation delivered for insertion in Major's approved Purchase Order are the only terms that apply to the Contract.

- (c) You fully indemnify and hold Major harmless from any Claim based on terms and conditions outside of these Terms and Conditions.

## 5. CLIENT/TRAINEE'S OBLIGATIONS

- (a) Every Client/Trainee must:
  - (i) act in accordance with all directions and instructions given to him or her by us;
  - (ii) not receive assistance when undertaking the course assessment from anyone other than a Major trainer
  - (iii) correctly identify themselves for purposes of assessment and confirm work submitted was their own
  - (iv) make themselves available for additional assessment and identity verification if required
  - (v) provide a valid Unique Student Identifier (USI) number to receive their Statement of Attainment and White Card
  - (vi) not remove or allow the removal of our Equipment or property from our premises without our prior written consent;
  - (vii) not alter, make any addition to, deface or erase any identifying mark, plate or number on our Equipment or property;
  - (viii) ensure that all safety and operating instructions and notices are observed and are not defaced or removed from our Equipment or property;
  - (ix) do all things reasonably necessary to ensure the safety of our personnel and other persons attending Training;
  - (x) do all things reasonably necessary to maintain the condition of our Equipment and property;
  - (xi) use our Equipment and property for purposes that are lawful and for which they are designed only;
  - (xii) verbally notify us within 15 minutes if any part of our Equipment becomes damaged, bogged, breaks down, requires inspection or repair or for any reason can no longer be used;
  - (xiii) immediately cease the use of our Equipment and take all reasonable steps to prevent injury to any person or damage to our Equipment or property if the Equipment becomes damaged, bogged, breaks down or appears to require inspection or repair; and
  - (xiv) not repair or attempt to repair our Equipment without our prior written consent.
- (b) You must provide a suitable training room or similar for the supply of any classroom-based Training at your premises or jobsite.
- (c) You will be liable for any costs incurred or damages suffered by Major as a result of any Training provided to you or breach of any Obligation by a Trainee.

## 6. PAYMENT

- (a) You must pay the amount stated in any invoice issued by Major under the Contract before Training commences unless you have made a credit application to Major and a Credit

Acceptance Letter has been issued to you by Major.

- (b) Where a Quotation allows for a certain number of persons to attend Training and the number of persons that actually attends for Training exceeds that certain number allowed for, Major may adjust the amount of that Quotation on a *pro rata* basis and invoice you for the adjusted amount without your approval.
- (c) If you fail to pay an invoice in accordance with paragraph (a), the unpaid portion of the amount of that invoice becomes an Overdue Amount.
- (d) You do not have any right to set-off an amount against a Debt or Overdue Amount and any Claim you believe that you have against Major for monetary remuneration shall not limit your Obligations to pay a Debt under this Contract.
- (e) Major may charge interest at the rate of 4% per month on any Overdue Amount until that Overdue Amount is paid.

## 7. CREDIT

If you have made a credit application to Major, the payment terms stipulated in your "Credit Acceptance Letter" will apply until such time as Major revokes your entitlement to credit which may occur at any time completely at Major's discretion. These terms will be 30 days in the event no payment terms are supplied in a "Credit Acceptance Letter".

## 8. LIMITATION OF LIABILITY

- (a) If you have a genuine grievance with any Training you must notify Major in writing within three days after that Training is provided. Major will then consider the merits of your claim and at its sole discretion:
  - (i) provide a partial or full refund for that Training;
  - (ii) provide further Training; and/or
  - (iii) decline to provide any remedy contained in this clause.
- (b) Major expressly disclaims, to the fullest extent permitted by law, all express, implied and statutory warranties.
- (c) Where any statutory warranties may not be excluded, Major' liability is limited to an amount equal to the amount invoiced by Major for the Training.
- (d) Major is not obliged to provide any refund or further Training to you where you cancel Training after Training has commenced or fail to attend any scheduled Training for any reason.
- (e) Major will not be liable for any damage, loss, expense, charge or cost incurred by you as a consequence of:
  - (i) any delay by Major to supply Training to you;
  - (ii) termination of a Contract by you or us;
  - (iii) cancellation of Training by you or us;
  - (iv) any injury or death to you or any other person; and/or
  - (v) any damage to Equipment or property.

- (f) You must give Major a minimum of **72 hours'** notice for cancellation of Training. You will be liable to pay the amount equal to 50% of the amount that would have been payable under a Quotation had you not cancelled the Training, together with any travel costs incurred by Major as a result of late cancellation. All refunds or credit claims must be made within a **90 days** period from the date of the cancelled training and will incur an admin fee.
- (g) Major in no way warrants the appropriateness of any Training for any specific purpose. It is the Trainee's responsibility to ensure that any Training will accomplish what the Trainee wishes it to accomplish.
- (h) You must fully indemnify Major against any Claim that becomes due and payable by Major under a Contract or as a result of entering into a Contract and arises from or in connection with:
  - (i) any injury or death to you or any other person; and/or
  - (ii) any damage to or theft of Equipment or property.

## 9. TERMINATION

- (a) **Termination by Major**
  - (i) Major may terminate a Contract immediately upon notice to you in any form at any time and for any reason.
  - (ii) Major's only liability to you upon termination of the Contract without reason is to refund to you any advance payments made for Training not yet taken place, less any Debt owing to Major.
- (b) **Termination by you**
  - (i) You may terminate a Contract upon written notice to Major sent by registered post to Major's head office at 38 Prairie Road, Ormeau QLD 4207;
  - (ii) Upon your termination of a Contract, you will still be liable to pay Major any Overdue Amounts and any amount that would have been payable pursuant to a Quotation had you not terminated the Contract.

## 10. PRIVACY

Except as permitted under these Terms and Conditions, Major will not, without your consent, use your Personal Information in a way that breaches the *Privacy Act 1988* (Cth).

## 11. DISPUTE RESOLUTION

If you consider there is a genuine dispute between the Parties regarding any aspect of a Contract or its performance then before seeking arbitration, commencing other legal proceedings or making a complaint to the Department of Education, Training and Employment, Queensland, or other relevant government authority, you must give Major notice in writing setting out full details of the dispute (**Dispute Notice**) and the Parties agree to take the following steps to resolve the dispute:

- (a) for a period of 14 days after a Dispute Notice is given (or a longer period if the Parties agree in writing), the Parties will
- (b) engage in negotiations and discussions in order to seek to resolve the dispute;
- (c) the Parties must participate in the negotiations and discussions and use all reasonable endeavours to resolve the dispute;
- (d) the Parties may also appoint third party consultants to assist in the resolution of the dispute;
- (e) if the Parties cannot resolve the dispute within the period stated in paragraph (a), the dispute may be referred to –
  - (i) the Department of Education, Training and Employment, Queensland, or other relevant government authority with jurisdiction to determine the dispute;
  - (ii) mediation provided that both parties agree to refer the matter to mediation and agree to the appointment of a particular mediator; or
  - (iii) a court of competent jurisdiction or an adjudicator with jurisdiction to determine the dispute, such referral being made by either of the Parties.

## 12.

## ILLEGALITY AND SEVERABILITY

So far as possible a Contract will be construed so as not to be invalid, illegal or unenforceable but if any provision on a proper construction is illegal, invalid or unenforceable:

- (a) that provision will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable and in such manner as may be reasonable in all the circumstances so as to give it a valid operation of a partial character; or
- (b) if the provision or part of it cannot be read down in a manner that will give it a valid operation, then the provision or relevant part will be deemed to be void and severable and the remaining provisions of this document will not in any way be affected or impaired.

## 13.

## JURISDICTION

You agree that the laws of Queensland apply to a Contract regardless of your business, residential location, the address for supply of Training or any other factor.

## 14.

## GUARANTEE

If the Client/Trainee is a corporation, in consideration for Major agreeing to provide Training to the Client/Trainee, the parties listed either at the foot of these Terms and Conditions or within the Credit Application unconditionally and irrevocably guarantee to Major the Clients/Trainee's performance of the Clients/Trainee's Obligations under the Contract and the payment of all monies owing at any time by the Client/Trainee to Major, whether owing under the Contract or otherwise.

**EXECUTED** as a deed.

**SIGNED SEALED** and )  
**DELIVERED** by )  
in the presence of: )  
)

\_\_\_\_\_  
Witness

Name (printed):

**SIGNED SEALED** and )  
**DELIVERED** by )  
in the presence of: )  
)

\_\_\_\_\_  
Witness

Name (printed):