

SKILLS4WORK
DETAILED TERMS OF TRADE

1. GENERAL

- 1.1 All goods or services supplied by Skills4Work are on the basis set out below unless otherwise agreed in writing. In the event of any conflict between these terms and any subsequent written contract between the parties, the Terms of the subsequent written contract shall prevail.
- 1.2 If a party consists of more than one person, these terms binds them jointly and each of them severally.
- 1.3 **Customer** means the person named as the other party to whom these terms apply to and is the person named in the Service Provision Agreement.
- 1.4 The Estimated Price, Estimated Completion Date and Work Objectives are set out in the relevant Programme / Service Price Table documents provided.

2. PERFORMANCE

- 2.1 Skills4Work will use its reasonable skill, care and effort to achieve the work objectives at the Estimated Price using resources reasonably available.
- 2.2 Skills4Work will use its reasonable efforts to achieve the Work Objectives on or before the Estimated Completion Date and will not be liable for any delay beyond that time.
- 2.3 Without limiting clause 2.2, Skills4Work will not be liable for any delay or non performance or for exceeding the Estimated Price if it is attributable (directly or indirectly) to circumstances beyond its reasonable control.

3. PAYMENT AND INVOICING

- 3.1 Payment for all goods and services is due 14 days following the date of the Skills4Work invoice. Skills4Work may as its option issue an interim monthly invoice for work delivered when the duration of the programme or service exceeds one month. The customer must pay the full amount owing without regard to any set-off, claim or reduction.
- 3.2 If the customer disputes the amount claimed, or part thereof, on any invoice which Skills4Work issues, the Customer must report a dispute within 7 days from date of invoice. The Customer must deal with the dispute in accordance with Clause 6.
- 3.3 The Customer will render payment of all invoices to Skills4Work, by electronic direct credit into our nominated bank account.
- 3.4 The customer will be invoiced for 10% of the total training cost as an initial payment upon the signing of a Service Provision Agreement. The amount refundable in the event of a cancellation (through no fault of Skills4Work) of the service provisioning agreement shall be net of any incurred costs by Skills4Work. A further invoice covering the production of specific materials will be invoiced for 14 days prior to the commencement of training. The remaining balance will be invoiced on completion of the training. Short courses and distance learning packages will be invoiced for prior to commencement of training.
- 3.5 Charges for Products and/or Services are GST exclusive and are detailed in the Service Provision Agreement. Charges will be applied from the date authorised by the Customer and Skills4Work in the Service Provision Agreement.
- 3.6 ACCOUNT COLLECTION: Skills4Work may, at its discretion, forward details of any amounts remaining outstanding and overdue for payment, to a recovery agency of Skills4Work's choosing, for the purpose of effecting collection of any monies owing under this agreement. Should Skills4Work utilise the services of a recovery agent, including but not limited to, a debt collection company, private investigator, legal agent or solicitor, the Customer undertakes to indemnify and make payment to Skills4Work for all costs, whether these costs be on a fixed or contingent basis, in regard to the collection of any monies owed by the Customer. If a decision is made by Skills4Work to recover the costs using legal proceedings, these costs may at the discretion of Skills4Work form part of the Statement of Claim, and be added to the amount owed by the Customer.

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3.7 If the customer is in breach of these Terms or any other contract with Skills4Work, Skills4Work may, without prejudice to its other rights or remedies, terminate the Contract. It may also withhold or suspend supply of goods or services under this or any other contract, and/or withdraw any certification or accreditation issued to the customer under this or any other contract.

4. CREDIT CHECK CLAUSE (PRIVACY ACT 1993)

4.1 **Credit Information:** By signing this Agreement the Customer authorises Skills4Work to obtain information from any source, including but not limited to credit bureaus and trade suppliers, in support of the Customer's application for a credit account with Skills4Work. The information obtained will be held by Skills4Work for the purpose of assessing the Customer's credit worthiness, both now and in the future while this Agreement remains in force. Pursuant to the Privacy Act 1993 the Customer may ask to see information held about it, with the exception of information classed as evaluative material as outlined in section 29, Privacy Act 1993, and the Customer may request that correction be made to the information pursuant to Principal 7, Privacy Act 1993. Should the Customer's application for a credit account be declined, Skills4Work does not need to supply a reason for the decline.

4.2 A Credit Application form maybe requested to be completed.

5. CONFIDENTIAL INFORMATION

5.1 The recipient of Confidential Information ("**the Recipient**") belonging to another party ("**the Discloser**") must take all reasonable steps to ensure that it and each of its officers, employees, contractors and professional advisors (and their respective employees and officers) to whom Confidential Information is disclosed, keep confidential the Confidential Information during the continuance, and after the termination, of this Agreement.

5.2 Subject to Clause 5.3, "**Confidential Information**" means information (whether oral, in writing or in any other form) belonging to a party which relates to that party's Intellectual Property Rights or financial affairs, and any other information belonging to that party of commercial value to that party which, by its nature, is, or could reasonably be expected to be regarded as, confidential.

5.3 Confidential Information does not include information that:
the Recipient can demonstrate was known to it prior to the date of disclosure;
a) is lawfully and independently obtained from a third party without restriction as to its disclosure or use;
b) is independently deduced, discovered or developed by the Recipient;
c) is or becomes (through no fault of the Recipient or its officers, employees, contractors or professional advisors, and their respective employees and officers) public knowledge;
d) the Recipient is required to disclose by law or by order of any court of competent jurisdiction or of any regulatory authority whose requirements are binding on the Recipient;
or
e) is released from its confidential status by the Discloser.

5.4 The Recipient must ensure that it does not make public or disclose the Confidential Information to any party except:
a) its officers, employees, contractors and professional advisors (and their respective employees and officers) who:
(i) have a need to know (and only to the extent that they have a need to know);
and
(ii) are aware that the Confidential Information must be kept confidential.

5.5 The Recipient acknowledges for itself and for each of its officers, employees, contractors and professional advisors (and their respective employees and officers) that:
a) it is aware that any breach of this clause 5 will result in the Discloser suffering loss or damage for which damages may not be an adequate remedy; and
b) in the event of a suspected or actual breach of any obligation of confidentiality under this Agreement, the Discloser is entitled to obtain injunctive relief without having to prove actual damage.

5.6 The Recipient indemnifies the Discloser against all loss (except consequential loss) or damage that the Discloser reasonably sustains or incurs as a result, whether directly or indirectly, of any breach of this clause 5 by the Recipient or its officers, employees, contractors and professional advisors (and their respective employees and officers).

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5.7 On expiry or termination and at any other time, at the request of the Discloser, the Recipient must immediately deliver up or destroy (as directed by the Discloser) all forms of the Discloser's Confidential Information in its power, custody or control and provide written confirmation of that delivery or destruction, as the case may be.

5.8 This Clause 5 will survive the termination or expiry.

6. WARRANTY, LIABILITY AND INDEMNITY

- 6.1 Skills4Work warrants that it shall exercise all reasonable skill, care and effort in providing any goods and services to the customer pursuant of these Terms.
- 6.2 Skills4Work is not liable for any loss of profits, or any special, indirect, incidental or consequential damage, loss or injury arising directly or indirectly from any breach of Skills4Work obligations under or in connection with this contract, or from any cancellation of the contract, or from any negligence, misrepresentation or other act or omission on the part of Skills4Work, its servants, agents or contractors.
- 6.3 Skills4Work and the Customer agree that any goods supplied under these Terms are for the purposes of a business and hence the statutory guarantees of the Consumer Guarantees Act 1993 do not apply. Should those statutory guarantees apply, these Terms shall be interpreted subject to the Consumer Guarantees Act 1993.
- 6.4 Skills4Work does not warrant that the manufacture of or use of goods, or use of information or methods, developed or provided under these Terms is not an infringement of the intellectual property rights of third parties.

7. TERMINATION

- 7.1 Skills4Work may by notice in writing to the Customer terminate Skills4Works obligations under the following terms:
- a) upon the provision of the goods and services to the Customer and payment of all monies owing by the Customer under these Terms, or
 - b) at the option of Skills4Work, where it appears to Skills4Work that it is likely that the cost of achieving the work objectives will exceed the estimated price by 20% or more (provided that the customer advises Skills4Work within 1 month of there being of such likelihood, that it wishes to terminate the contract) or
 - c) if the customer commits any act of bankruptcy, enters into an arrangement with its creditors or (in the case of a company) does any act which would render it liable to be liquidated, or if a resolution is passed or proceedings commenced for the liquidation of the Customer, or if a receiver, statutory manager or similar functionary is appointed in respect of all or any of its assets, or
 - d) upon mutual agreement of the parties
- 7.2 Termination will not affect the rights of either party in respect of any breach of these Terms in existence prior to termination.

8. DISPUTE RESOLUTION

- 8.1 Any dispute between the Customer and Skills4Work will be resolved in accordance with this clause.
- 8.2 If a party considers a dispute has arisen, it must give written notice of the particulars within 24 hours after noticing the default of the dispute to the other party. ("Notification") Within ten (10) business days of receipt of the Notification, a senior officer of each party with authority to settle the dispute ("Authorised Officer") must meet to discuss and attempt to resolve the dispute.
- 8.3 If the Authorised Officers of the parties cannot resolve the dispute within then (10) Business days of the meeting, either party may refer the dispute to mediation by a New Zealand Law Society Approved Mediator agreed by the parties or as otherwise agreed by both parties.

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- 8.4 The role of any Mediator is to assist in negotiating a resolution of the dispute. A Mediator may not make a decision that is binding on a party unless that party has so agreed in writing. Each party must bear its own costs of and incidental to the mediation and the parties must bear equally the costs of any Mediator engaged.
- 8.5 If the dispute is not resolved with two (2) Business days of the commencement of mediation, or such longer period as the parties may agree, either party may then, but not earlier, commence proceedings in any court of competent jurisdiction.
- 8.6 Each party will continue to perform notwithstanding the existence of a dispute or of any proceedings under this Clause 8.
- 8.7 Any information or documents disclosed by a party under this Clause 6 must be kept confidential and may not be used for any purpose other than the settlement of the dispute under this Clause 8.

9. MISCELLANEOUS

- 9.1 The Customer may not assign all or any of its rights or obligations under these Terms without the prior consent of Skills4Work.
- 9.2 All rights, powers, exemptions and remedies of Skills4Work remain in full force despite any neglect, omission or delay in the enforcement thereof. Skills4Work is not deemed to have waived any provision or right unless the waiver is in writing under signature of Skills4Work or its authorised officer and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.
- 9.3 All notices shall be delivered by hand or be sent by facsimile, email, fast post or courier. Any notice sent by facsimile shall be deemed to have been received on the following day in the place of receipt, any notice sent by fast post will be deemed to have been received three business days after posting and any notice sent by email will be deemed to have been received. Notices shall be given to the parties at the address, facsimile number or email addresses set out in the document attached or such other addresses, facsimile numbers or email addresses as they may from time to time advise in writing.
- 9.4 These Terms constitute the entire agreement between the Customer and Skills4Work with respect to matters contemplated in these Terms and supersedes all previous agreements, arrangements or understandings between the Customer and Skills4Work.
- 9.5 The Customer must advise Skills4Work of any relevant safety hazards pertaining to the services requested by the customer and provide all relevant Material Safety Data sheets.
- 9.6 If any provision of these Terms shall be invalid, void, illegal or unenforceable, then the validity, existence, legality and enforceability of the remaining provisions shall not be affected.
- 9.7 The Terms shall be governed by the laws of New Zealand and Skills4Work and the Customer agree to submit to the non exclusive jurisdiction of the Courts of New Zealand.
- 9.8 All Intellectual Property and Skills4Work produced learning and assessment material will remain the property of Skills4Work at all times, during and on completion of any agreement. On completion of any agreement, any Intellectual Property should be returned to Skills4Work immediately.
- 9.9 Where a Service Provision Agreement is involved the Customer shall agree to and abide by all terms and requirements outlined in the said agreement.