

## Terms and Conditions -- Executive Education

### 1 Definitions and Interpretation

#### Definitions

**Confidential Information** means all information disclosed by or on behalf of UQ or the Participant (**the Discloser**) to the other party (**the Recipient**) in connection with this Contract or created using that information, which is confidential in nature and designated as confidential or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information. Confidential Information does not include any information which:

- (a) is or becomes public, except through breach of a confidentiality obligation;
- (b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient;
- (c) the Recipient receives from another person on a non-confidential basis.

**Contract** means an agreement between UQ and the Participant, made up of the terms specified in the Description and these Terms and Conditions.

**Course** means the Executive Education Professional Development Course.

**Deliverables** means Services and/or the documentation to be provided by UQ to the Participant as described in the Description.

**Description** means the information on the UQ Business Website which describes the particulars of the Services to be provided to the Participant including the Deliverables, cost, mode of delivery, date of delivery (if relevant), duration and overview of the Services.

**GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*

**Health Authority** means the Queensland Government Health Department or such other entity, agency or department as may be charged from time to time with administering health proclamations and regimes for all persons within the state of Queensland.

**Intellectual Property Rights** includes all copyright, trademark, design, patents, semiconductor or circuit layout rights, plant breeders' rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Contract but excludes Moral Rights.

**Invoice** means the tax invoice provided by UQ which specifies the Price for the Services to be provided.

**Laws** means all:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of Queensland;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables;
- (c) the requirements of any authority with jurisdiction in respect of the Deliverables, as applicable; and
- (d) fees and charges payable in connection with the foregoing.

**Moral Rights** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968 (Cth)*, and rights of a similar nature anywhere in the world, whether existing before or after the date of the Description.

**Pandemic Event** means an event or circumstance caused by a pandemic recognized in the State of

Queensland by the Health Authority as a wide-ranging health emergency including but not limited to:

- (a) travel restrictions imposed by the Health Authority;
- (b) actions taken in response to warnings or advice issued by the Health Authority;
- (c) the non-availability or shutdown of premises or facilities;
- (d) unavailability of personnel due to illness, isolation or quarantine measures;
- (e) failure or delay in supply of or access to necessary materials, consumables or equipment;
- (f) non-availability of sufficient or economic insurance cover; and
- (g) actions taken by a party in relation to paragraphs (a) to (f).

By way of example, the COVID-19 Pandemic experienced throughout Australia in the years 2019 - 2022 is classified as a Pandemic Event under this definition.

**Participant** means the person or entity listed in the personal details section of the registration form.

**Price** means the price from the Services set out in the Description or as advised by UQ in writing.

**Services** means the Course which UQ will provide to the Participant, or the Participant's employee or representative, as set out in the Description.

**UQ** means The University of Queensland ABN 63 942 912 684, a body corporate established by the *University of Queensland Act 1998* (Qld).

**UQ Executive Education Website** mean <https://business.uq.edu.au/executive-education> [please confirm this is where the course is best described).

### **Interpretation**

In this Contract unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (e) agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (f) the headings to the clauses are not to affect the interpretation;
- (g) Business Days means those days which are not Saturdays, Sundays or declared public holidays in Brisbane, Australia; and
- (h) unless otherwise specified in the Description, all currency amounts are in Australian dollars.

## **2 The Contract**

- (a) A Contract will be formed between UQ and the Participant in accordance with these Terms and Conditions when UQ accepts the booking from the Participant who completes the required details with UQ.
- (b) UQ reserves the ability to refuse or deny admission of any Participant at its discretion without being liable to ascribe any reason for such refusal or denial. A refusal or denial may be made by UQ even after an initial acceptance is granted to a Participant.
- (c) Only these Terms and Conditions and the Description will form part of the agreement between UQ and the Participant, regardless of the mechanism of payment used in respect of the Deliverables.

- (d) For the avoidance of doubt, receipt of the Services by the Participant will constitute acceptance of these Terms and Conditions.
- (e) To the extent of any inconsistency between the Description and these Terms and Conditions, except as set out in clause 11(c), the Description will take precedence.

### **3 UQ to provide Services**

- (a) UQ must provide the Services: -
  - (i) in accordance with and subject to these Terms and Conditions and any terms specified in the Description; and
  - (ii) using reasonable care and skill.
- (b) In providing the Services, UQ must comply with all Laws.
- (c) If the Participant fails to attend the location at the time specified in the Description, UQ will be deemed to have provided the Services and any monies paid by the Participant will not be refunded.

### **4 Use of Subcontractors**

UQ is permitted to use other persons to provide some or all of the Services, at UQ's absolute discretion.

### **5 Participant Obligations**

- (a) The Participant must meet all requirements specified by UQ in the Description prior to receiving the Services.
- (b) The Participant must co-operate with UQ during the provision of the Services, as UQ reasonably requires.
- (c) The Participant must provide UQ with the information and documentation that it reasonably requires to enable UQ to provide the Services.
- (d) The Participant must use the Services (including any Deliverables) solely for the purposes stated in the Description or as reasonably contemplated by this Contract and using reasonable skill and care.
- (e) The Participant must adhere the University's high standard of academic integrity.
- (f) The Participant must comply with UQ Policy 3.60.04 (Student Integrity and Misconduct) and all other relevant policies of UQ as if the Participant was an enrolled student of UQ.

### **6 Invoicing, Price and Payment**

- (a) UQ will provide a Tax Invoice to the Participant when the Participant completes a booking and finalizes payment of the Price for the Services.
- (b) The Participant will pay the Price set out in the Tax Invoice either: -
  - (i) through UQ Pay using a credit card at the time of confirming the booking; or
  - (ii) by another payment method acceptable to UQ by the due date specified on the Tax Invoice.
- (c) If the Participant does not pay an Invoice by the due date, UQ will be entitled to suspend its provision of the Services until such time as the Invoice is paid by the Participant.

### **7 GST**

- (a) Unless expressly stated otherwise, all amounts specified in this Contract and the Description are GST inclusive.
- (b) Where GST is imposed on a supply under the Contract, the Participant shall also pay to UQ an amount equal to the GST (if any) payable on the taxable supply, at the same time that the Participant is required to make the payment for the taxable supply, provided that the Participant receives a valid Tax Invoice at or before the time of payment. Terms in this clause have the same meaning as in the GST Law.

## 8 Exclusions

- (a) To the full extent permitted by Law and subject to clause (b), UQ excludes all conditions, warranties and guarantees (whether express or implied) and makes no representations and gives no warranties regarding the Services.
- (b) In the event that any condition, warranty or guarantee is imposed or incorporated by law and cannot be excluded, then to the extent UQ is not prohibited from so limiting its liability, the total liability of UQ (under any legal theory) for any breach of such condition, warranty or guarantee is limited (and, to the extent not prohibited by law, at UQ's option) to:
  - (i) supplying the Services again; or
  - (ii) the supply of equivalent Services,and, to avoid doubt, to the extent the *Australian Consumer Law* (as defined in the *Competition and Consumer Act 2010* (Cth)) prevents UQ from limiting or excluding its liability as specified in this clause or elsewhere in this Contract, the *Australian Consumer Law* applies to that extent.

## 9 Insurance

- (a) UQ must maintain for the duration of the Course the following insurances:
  - (i) public liability insurance of \$20M or more per occurrence; and
  - (ii) workers' compensation insurance as required by law.
- (b) If the Participant is an entity an employee of which is undertaking the Course, then the Participant must maintain for the duration of the Course the following insurances:
  - (i) public liability insurance of \$10M or more per occurrence; and
  - (ii) workers' compensation insurance as required by law.
- (c) Each party must provide proof of the insurances required by this clause on reasonable request by the other party.

## 10 Liability and Indemnity

- (a) Nothing in this Contract operates to limit or exclude:
  - (i) liability that cannot by law be limited or excluded;
  - (ii) the liability of either party in respect of personal injury (including sickness and death) or real or tangible property loss or damage;
  - (iii) liability of either party for fraud, wilful misconduct or for unlawful or illegal acts or conduct; or
  - (iv) the Participant's liability under clause (b).
- (b) The Participant will indemnify, defend and hold harmless UQ and its officers, personnel, agents, successors and assigns (collectively, the **Indemnified**), against any liability arising from, in connection with, or based on allegations of, any of the following:
  - (i) any fraud or wilful misconduct of the Participant, its agents, subcontractors or personnel under or in connection with this Contract;
  - (ii) any infringement, or alleged infringement, of a third party's Intellectual Property Rights by the Participant in relation to its use of the Deliverables;
  - (iii) any breach by the Participant of its obligations of confidentiality in this Contract;
  - (iv) personal injury, death or loss of or damage to real or tangible personal property (including data) caused by the Participant, its agents, subcontractors or personnel under or in connection with this Contract;
  - (v) personal injury, death or loss of or damage to real or tangible personal property (including data) of the Participant, its agents, subcontractors or personnel arising from the performance of or in connection with this Contract; and
  - (vi) any claim, action or proceeding by a third party against any of the Indemnified to the extent that it relates to any of the foregoing indemnities.

- (c) Subject to clause (d), neither party will be liable to the other party under or in respect of this Contract whether in contract, tort (including negligence) or statute or for any other cause of action for any loss or damage which, although in the contemplation of the parties at the time they entered into this Contract is not a loss or damage which may fairly and reasonably be considered to arise naturally (that is, in the usual course of things) from the breach.
- (d) The parties agree that the following heads of damage arise naturally from a breach of this Contract by the Participant and will be recoverable by UQ notwithstanding clause (c):
  - (i) third party costs incurred by UQ in preparing for or carrying out its obligations under this Contract;
  - (ii) internal project and management costs incurred by UQ in relation to this Contract;
  - (iii) reasonable costs of advertising where such advertisement is reasonably necessary or required by law or of providing information to UQ's students and other stakeholders in the event of default by the Participant;
  - (iv) reasonable legal fees relating to the Participant's default;
  - (v) statutory liability, including financial penalties imposed by courts, governmental agencies and regulators, relating to the Participant's default under this Contract;
  - (vi) payment of any legitimate claim made by a third party against UQ for a direct loss resulting from a default by the Participant; and
  - (vii) expenditure and fees paid that are rendered unnecessary (thrown away) as a result of a breach of this Contract.

## 11 Intellectual Property Rights

- (a) The Participant acknowledges and agrees that UQ owns all Intellectual Property Rights in the Services and Deliverables and in anything (including in electronic form) used or created by UQ or its personnel (including staff, contractors and subcontractors) for or in connection with the supply of the Services.
- (b) Subject to receipt of payment in full of the Price pursuant to clause 6, UQ grants the Participant a non-exclusive, non-transferable, personal licence to use any Intellectual Property Rights in the Services solely for its own internal business purposes relating to the present or future enjoyment of the Services.
- (c) The Description may specify additional use rights and restrictions on use (including the duration of use), but neither the Description nor any other document or thing forming part of the Contract or any Deliverable, will have any effect to the extent it purports to:
  - (i) authorize the Participant to modify any Intellectual Property Rights in any Deliverable or to create derivative works from them or to sell, transfer or otherwise dispose of, or commercialise, such Intellectual Property Rights; or
  - (ii) grant an exclusive licence to any such Intellectual Property Rights; or
  - (iii) assign or otherwise transfer any such Intellectual Property Rights from UQ to any other person.

## 12 Confidentiality and Privacy

- (a) The parties must not disclose to third parties or use for any purpose (other than for the purpose of providing the Services or using the Deliverables or to the extent specifically authorized in writing by the other party, required by law or the information is already public) any: -
  - (i) Confidential information; or
  - (ii) Information relating directly or indirectly to the other party, the other party's business or this Contract (including without limitation any financial, technical, economic, market and other information, reports, policies, plans, drawings, specifications, designs, data or ideas),

that is disclosed to, communicated to or otherwise created ascertained or discovered directly or indirectly in the course of or in connection with UQ's provision of the Services whether before or after the date of this Agreement.

- (b) The Participant must obtain UQ's written approval before publishing or publicizing any information relating to UQ or the Services.
- (c) UQ may publish material relating to the conduct and conclusions of the Services, including the Deliverables.
- (d) Subject to clause (e), if any personal information is provided to UQ, that personal information will be subject to UQ's Privacy Management Policy, which can be viewed [here](#). More information on privacy in relation to UQ can be obtained from the Right to Information and Privacy Office [here](#) and you can contact the Right to Information and Privacy Coordinator [here](#).
- (e) UQ may retain, use and disclose personal information provided by the Participant to:
  - (i) provide the Services and Deliverables;
  - (ii) inform the Participant of future events or activities at UQ;
  - (iii) undertake statistical analysis of de-identified data;
  - (iv) provide to a third party to facilitate the University rankings and accreditation;
  - (v) provide to third party contractors that are performing some or all of the Services under this Contract; and
  - (vi) assist UQ in relation to exercising or enforcing UQ's rights.
- (b) The Participant consents to UQ taking photographs and videos of the Services being provided which may include images of the Participant and agrees that UQ can use those images in the ordinary course of its business.

### **13 Force Majeure and Termination without Default**

#### *Force Majeure*

- (a) This clause 13 does not apply if a Pandemic Event occurs.
- (b) Neither party has any liability under or may be deemed to be in breach of this Contract for any delays or failures in performance of this Contract which result from circumstances beyond the reasonable control of that party.
- (c) The party affected by these circumstances must promptly notify the other in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than three months, either party may terminate this agreement by written notice to the other party.

#### *Termination without Default*

- (d) If the Participant is unable to attend the location for the delivery of the Services and provides to UQ no less than 5 Business Days written notice, UQ will allow the Participant to either.
  - (i) transfer their booking to an alternate course to be held within 12 months of the currently booked course; or
  - (ii) cancel their booking and request a refund of the Price as paid for the Services against which will be deducted an \$80 administration fee.
- (e) If the Participant is unable to attend the location for the delivery of the Services and fails to provide to UQ the 5 Business Days written notice as required under clause (d), the Participant will be excluded from attending the booked course and will forfeit the Price paid for the Services. In the case of exceptional circumstances, as determined by UQ in its absolute discretion (and without being obliged to assign reasons), UQ may refund the Price or a portion of the Price to the Participant.

### **14 Termination because of Default of Participant**

If the Participant is in default of its obligations under this Contract, UQ may deliver written notice to the Participant requiring the breach to be remedied and if the Participant fails to rectify the breach within 5 Business Days of receipt of the written notice then UQ may give a further written notice advising the Participant that this Contract is terminated subject to the ability for UQ to take such lawful proceedings

as may be required to recover any unpaid portion of the Price for the Services as may be owed to UQ by the Participant.

## 15 Suspension or termination due to Pandemic Event

- (a) In addition to any other rights under this Contract, if a Pandemic Event occurs that adversely affects a party's ability to perform this Contract (the Pandemic **Affected Party**), the Pandemic Affected Party may, by notice in writing to the other party, suspend the performance of all or part of this Contract (a Pandemic **Suspension Notice**). A Pandemic Suspension Notice must specify:
  - (i) the details of the Pandemic Event;
  - (ii) the obligations under this Contract that are adversely affected and suspended; and
  - (iii) the period of suspension, which is 90 days unless otherwise agreed by the parties (the Pandemic **Suspension Period**).
- (b) During the Pandemic Suspension Period:
  - (i) the obligations specified in the Pandemic Suspension Notice are suspended;
  - (ii) the parties must seek to agree on a course of action to address the Pandemic Event; and
  - (iii) the parties may agree to extend the Pandemic Suspension Period.
- (c) For the avoidance of any doubt:
  - (i) a party will not be liable to the other for any costs, losses or damages arising as a result of the suspension of obligations by the Pandemic Suspension Notice;
  - (ii) the parties must continue to perform any obligations under the Contract that are not suspended by the Pandemic Suspension Notice; and
  - (iii) the Pandemic Affected Party must resume compliance with suspended obligations as soon as practicable after the Pandemic Event no longer adversely affects the Pandemic Affected Party's ability to perform those obligations.
- (d) If the Pandemic Event continues to adversely affect the Pandemic Affected Party's ability to perform the suspended obligations upon the expiry of the Pandemic Suspension Period and the parties have not agreed upon a course of action to address the Pandemic Event, then this Contract terminates with immediate effect with no further action required by either party.
- (e) Despite any Pandemic Suspension Period or termination under this clause, the following amounts must be paid in full:
  - (i) any amounts due for the performance of obligations up to the date of the Pandemic Suspension Notice; and
  - (ii) any amounts due for performance of obligations that are not suspended by the Pandemic Suspension Notice.
- (f) A party may issue more than one Pandemic Suspension Notice under this clause.

## 16 Assignment

The Participant may assign their rights and obligations under this Contract by giving at least 1 Business Day's prior written notice of the assignment and providing details of the Assignee to UQ.

## 17 Notices

- (a) A notice or other communication connected with this Contract has no legal effect unless it is in writing.
- (b) Communications sent by: -
  - (i) hand are taken to be received when delivered;
  - (ii) post to an address in Australia are taken to be received by the third business day after posting;

- (iii) post to an address outside Australia are taken to be received by the seventh business day after posting; and
- (iv) by email upon receipt of confirmation of the date and time shown on the sender's successful transmission.

## **18 Law and Jurisdiction**

This Contract takes effect, is governed by and will be construed in accordance with the laws from time to time in force in Queensland, Australia. The parties submit to the non-exclusive jurisdiction of the courts of Queensland.

## **19 General**

The parties agree that:

- (a) they will direct all enquiries relating to the Contract to the other party's nominated contact person as set out in the Description and booking details on UQ Pay, or to another person if the other party directs;
- (b) the Contract may only be varied by written agreement of authorised representatives of the parties;
- (c) this Contract sets out all the parties' rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Contract. No other terms apply; and
- (d) their relationship is of principal and contractor. This Contract does not create any partnership, joint venture or employment relationship.