

TERMS & CONDITIONS

To the extent permitted by law, all contracts and dealings between Idria Pty Ltd (ABN 46 146 551 215) ('**Idria**') (and each of its subsidiaries, affiliates, associated companies, related entities, successors/parent company and assigns) and any person ('**Customer**') relating to any products ('**Products**') or services ('**Services**') provided and supplied by Idria to the Customer are subject to the terms and conditions of trade set out below ('**these Terms**').

These Terms shall be deemed to be incorporated into all contracts for the supply of Products or Services by Idria to the Customer. These Terms supersede all prior understandings, arrangements and agreements relating to such supply. In the event that there is any inconsistency between these Terms and any other communication from Idria, these Terms shall prevail unless specified otherwise in writing by Idria.

These Terms shall not be varied without the express written consent of Idria.

A reference in these Terms to:

- a. the singular includes the plural and vice versa; and
- b. words importing gender shall include the other gender.

1. Definitions

In these Terms:

"Delivery" or **"delivered"** means the time when the Products are transported from the premises of Idria by whatever means or when Idria advises the Customer the Products were available for collection.

"Intellectual Property Rights" means all intellectual property rights (whether created before, on or after the date of this Agreement and whether registered or unregistered) in respect of copyright, any patents, trademarks, logos, designs, software, domain names, business or trade name, together with marketing concepts and designs, product knowledge, training systems and materials, protection of confidential information, circuit layouts, inventions, know-how, product or business concepts, details of product development, and any other identifiable result of intellectual endeavour, whether arising under statute or otherwise or any similar industrial property right or any right to, or application for registration of, any of them;

"Licence" means the personal non-exclusive licence granted by Idria to the Customer to use the Intellectual Property Rights for their personal use, and includes the rights specified under clause 9;

"Monies Owed" means any amount due and payable by the Customer to Idria for the supply by Idria to the Customer of any Product/s or Services.

"Learning Management System" means (**LMS**) a software application for the administration, documentation, tracking, and reporting of training programs, classroom and online events, e-learning programs, and training content. **"Order"** means a request to Idria by the Customer to supply a Product or Service to the Customer.

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"Products" includes but is not limited to **Training Courses** and other products provided by Idria. **"Services"** includes Training Courses, consulting, development, research, LMS, hosting, technical support, room hire and catering. **"Training Course"** means public programs, qualifications, seminars, presentations and workshops designed and/or delivered by Idria, via independent contractors, professional speakers and guest speakers or Idria's employees, whether an in-company or customised course or a course for the general public which may be provided online or in person.

2. Pricing

- 2.1 Prices may be subject to change without notice.
- 2.2 Official quotations provided to the Customer by Idria are valid for a period of thirty (30) days from the quotation date, after which time such prices may be subject to change without notice.

3. Payment Terms

- 3.1 All invoices issued to the Customer by Idria must be paid within thirty (30) days of the date of issue. Any dispute regarding an invoice must be advised to Idria in writing by the Customer within that period.
- 3.2 If the Customer decides to commence proceedings to dispute any amount that Idria claims as Monies Owed, the Customer agrees to firstly deposit the disputed amount into an interest bearing account earning interest at the market interest rate in the joint names of Idria and Customer. Once the dispute is settled, the funds held in such account must be dispersed according to the terms of the settlement.

4. Cancellations and Transfers – Public Programs

- 4.1 If Idria cancels a Training Course, a full refund or transfer to another date or Training Course will apply.
- 4.2 If a Customer's booking for a Training Course is cancelled by the Customer more than fourteen (14) days prior to the commencement date of a Training Course:
 - (i) any money paid by the Customer to Idria for that Training Course may be refunded or applied as credit by the Customer for any Training Course that the Customer may undertake within twelve (12) months from the date of the cancellation; or
 - (ii) the Customer may transfer to another date or Training Course (subject to availability) provided that if the Customer wishes to transfer more than two participants, an administration fee of one hundred and fifty dollars (\$150).00 will be payable by the Customer to Idria.
- 4.3 If a Customer's booking for a Training Course is cancelled by the Customer for any reason (including, without limitation, any change to work commitments or personal circumstances) fourteen (14) days from the commencement date of a Training Course then:
 - (i) any money paid by the Customer to Idria shall be forfeited and may not be applied as credit towards any other Training Course or any transfer to another date; and

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- (ii) any outstanding course fees will be due and payable by the Customer to Idria and cannot be applied as credit towards any other Training Course; or
 - (iii) a substitute participant of the Customer may attend at no further cost provided that the substitute meets any entry requirements for the Training Course and can complete any required diagnostics or preparatory work within the specified time.
- 4.4 A Customer may make an application in writing to Idria in the event the Customer has had to cancel a booking for a Training Course due to exceptional circumstances, and Idria at its sole discretion may elect to refund any money paid by the Customer in respect of that booking. Such application is to be addressed to the General Manager.
- 4.5 The Customer will be charged the full fee for the Training Course for any participant who fails to attend. These fees cannot be applied as credit towards any other Training Course.
- 4.6 Clauses 4.2 and 4.3 only apply to Training Courses for the general public and do not apply to Training Courses which are in-company or customised courses.
- 4.7 Overpayments by the Customer will be refunded in full on written request by the Customer to Idria.

5. Cancellations and Transfers – In Company \Tailored Programs

The applicable terms and conditions in respect of cancelling or deferring a tailored program will be agreed as part of the In Company \ Tailored contract between the Customer and Idria.

6. Venue Room Hire

If the Customer hires a room from Idria for any purpose, including but not limited to the provision of catering and the hire of additional services and equipment, the terms and conditions of the applicable venue contract shall apply, a copy of which will be available to the Customer on request by the Customer to Idria in writing.

7. Interest

- 7.1 Any interest charged on overdue accounts and invoices under these Terms will be at a rate equivalent to two percent (2%) higher than the rate for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- 7.2 The Customer acknowledges that Idria has the right to charge interest on all accounts/invoices from the date that the account/invoice falls due.

8. Orders

The Customer agrees and acknowledges that:

- (a) By placing an Order for Products or Services it shall be deemed to be representing to Idria that it is solvent and able to pay all of its debts as and when they fall due;
- (b) Idria shall use its best endeavors to ensure that the Products are available and that the Services are provided to the Customer within the time frame requested, but shall not be liable for any loss or damage caused by any delay; and

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- (c) Except if expressly agreed in writing by Idria, the Customer shall not be entitled to reject the Products or Services due to any delay outlined above.

9. Intellectual Property Rights

- 9.1 The Customer's purchase of Products or Services does not confer on the Customer any assignment of any Intellectual Property Rights that subsists in the Products or Services, and the Customer agrees that it will not assert any rights in, or challenge Idria's title to, those Intellectual Property Rights.
- 9.2 Idria makes no representation or warranty to the Customer of any kind, express or implied that the Products or Services will not infringe any intellectual property rights of a third party.
- 9.3 The Customer acknowledges that Idria retains ownership of all rights, title, interest and goodwill in the Intellectual Property Rights.
- 9.4 Idria grants to the Customer, and the Customer accepts, a personal non-exclusive licence to use the Intellectual Property Rights for the purposes of this Agreement.
- 9.5 The Customer shall not be permitted to assign, transfer or sub-licence any of the rights granted to it by Idria to any related party or any unrelated third party without the express consent in writing of Idria. Idria may withhold such consent in its absolute discretion or may grant consent on such terms as it considers fit.
- 9.6 The Customer shall not re-publish, transfer, copy, reproduce or post on the internet any of Idria's materials without Idria's prior written consent.
- 9.7 In addition to any other remedies available to Idria under these Terms or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Intellectual Property Rights will entitle Idria to any available equitable remedy against the Customer.
- 9.8 Idria or its auditors may make relevant inquiries and / or inspect, during the Customer's usual business hours and on 48 hours' notice at other times, any premises occupied by or under the control of the Customer has complied, and is complying, with its obligations under this Agreement.
- 9.9 The Customer agrees to provide Idria and its authorised representatives with reasonable access to staff, records, computers, documents and intellectual property for the purposes of conducting due diligence in relation to compliance of its obligations under this Agreement.

10. Title

- 10.1 Save for any Intellectual Property Rights, which are covered under the clause 9, title in any Products delivered to the Customer shall not pass to the Customer until payment in full of all Monies Owed.
- 10.2 Idria reserves the right to take possession and dispose of Products as it sees fit at any time until full payment, and to that end the Customer grants Idria and its agents permission to enter any property where the Customer keeps Products provided by Idria.
- 10.3 Until the Customer has paid all the Monies Owed:

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- (i) the Products are held by the Customer as fiduciary trustee of Idria.
- (ii) the Customer must store the Products separately so that they are readily identifiable as the property of Idria.
- (iii) Idria has the right to call for and the Customer is under an obligation to deliver up the Products to Idria forthwith upon such demand.

11. Limitation of Liability

The Customer agrees:

- (a) To the extent permitted by law, Idria will not be liable to the Customer or any other person under any circumstances for any loss of use, profit, revenue or for any injury or death to any person, or for any indirect, incidental or consequential damages sustained or incurred by the Customer, whether such liability arises directly or indirectly as a result of:
 - (i) any negligent act or omission or willful misconduct of Idria or its employees or agents;
 - (ii) the supply, performance or use of any Products (including but not limited to operation and servicing issues that may arise from limitations or errors on client technical environment and infrastructure); or
 - (iii) any breach by Idria of its obligations under these Terms.
- (b) No other term, condition, agreement, warranty, representation or understanding (whether express or implied) in any way binding upon Idria, other than these Terms, is made or given by or on behalf of Idria.
- (c) The Customer is solely responsible in making an assessment that any Training Course, Products and/or Services are reasonably fit for the Customer's intended purpose and are in accordance with all applicable laws.
- (d) Participation by the Customer in Training Courses provided by Idria may involve physical activity. The Customer agrees that Idria will not be responsible for any injury or damage suffered by the Customer as a result of the Customer's acceptance of/or participation in Idria's Training Courses. The Customer agrees that it will not make any claim against Idria for any loss or damage whatsoever or howsoever suffered as a result of the Customer's acceptance of, or participation in, Idria's Products or Services, including Training Courses.

12. Exclusions

The Customer agrees that it will rely on its own knowledge and expertise in selecting any Training Course, Products and/or Services for any purpose and any advice or assistance given for or on behalf of Idria shall be accepted at the Customer's risk and shall not be deemed as expert advice nor is such advice or assistance to be relied upon by the Customer.

13. Returns of Product

The Customer agrees that:

- (a) Idria at its discretion may elect to accept returns of Products in saleable condition, on terms agreed between the parties, and a restocking fee of fifteen percent (15%) of invoice value shall apply;

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- (b) Any Product which Idria has elected to accept return of shall be returned at the Customer's cost;
- (c) Idria is under no obligation to provide a refund for Products returned; and
- (d) Any custom made, custom processed or custom acquired Products will not be returnable at all.

14. Specifications

In the interest of continued improvement, Idria reserves the right at any time to alter the specification in respect of the Products or Services without giving notice to the Customer. An alteration does not entitle the Customer to return Products, cancel an order or otherwise avoid its obligations and liabilities pursuant to these Terms.

15. Delivery of Products

The Customer agrees, in respect of any Products, that:

- (a) Idria accepts no responsibility and is under no obligation to deliver the Products but may elect to arrange delivery at its sole discretion. Such delivery will be and without liability to Idria, and the Customer shall assume all risk and cost associated with such delivery;
- (b) Idria will not be liable for delay, failure or inability to deliver;
- (c) Products shall be deemed delivered as soon as they are ready for delivery; and
- (d) The Customer will be charged for any costs incurred by Idria due to the Customer frustrating delivery for any reason, including but not limited to unsuccessful attempts by Idria to deliver the Products caused by the Customer.

16. Risk in the Products

- 16.1 Idria does not accept responsibility for any loss or other detriment arising by reason of any theft, loss or damage to, or otherwise concerning any property belonging to the Customer.
- 16.2 Further to clause 16.1, the Customer accepts upon delivery or collection of the Products all risk for loss or damage to the Products whether caused by the Customer or not, and the Customer indemnifies Idria against all claims, demands, suits and actions for loss or damage caused by or arising from the handling, transport, storage, display, installation, neglect or use of the Products after the Customer has taken possession of the Products. Risk in the Products will remain with the Customer at all times unless Idria retakes possession of the Products in accordance with clause 13.

17. Disclaimer

Any information provided by Idria to the Customer in a Training Course is general commentary and should not be regarded as specific advice. The Customer should not act on the basis of any information provided in seminars and courses offered by Idria without first seeking advice, including but not limited to advice regarding their specific circumstances.

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18. Other Terms and Conditions

These Terms constitute the entire agreement between the parties as to its subject matter and supersedes and cancels all prior agreements, understandings and negotiations in connection with it and may only be altered in writing signed by all parties.

19. Recovery Costs

The Customer shall pay and indemnify Idria against all costs and expenses incurred by Idria, its legal advisers, mercantile agents and associates in respect of proceedings instituted or considered against the Customer, whether due to debt, possession of any Products or otherwise.

20. Jurisdiction

The Customer agrees that all contracts made with Idria shall be deemed to be made in the State of Victoria and these Terms are governed by the laws of the State of Victoria and the parties unconditionally submit to the exclusive jurisdiction of the courts of Victoria and courts entitled to hear appeals from these courts.

21. Forward Orders

The Customer agrees:

- (a) To pay for so much of any Order as is from time to time invoiced by Idria in accordance with these Terms;
- (b) That no delay or failure to fulfill part of such Order will entitle any cancellation or variation of that order or reduce any payment; and
- (c) To pay any costs and expenses of Idria in handling and/or holding any Products once ready for delivery.

22. Force Majeure

If the performance of Idria's obligations under these Terms is prevented, restricted or affected by force majeure including strike, lock out, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of Idria, Idria will not be liable for any loss or damage suffered by the Customer or any other person and Idria will give the Customer written notice if the force majeure event has continued unabated for 30 days.

23. Warranties

- 23.1 Conditions, warranties and other provisions which apply to or in respect of the Products under or by virtue of the *Australian Competition and Consumer Act 2010* (Cth) as amended from time to time or any other enactment of the Commonwealth of Australia or of any State or Territory thereof and which, by or under that enactment, cannot be excluded from the contract for the supply of Products by Idria are declared to apply to the contract without restriction, limit or modification.
- 23.2 Subject to clause 23.1, all other guaranties, warranties and conditions which would, or may, but for this clause be implied (whether by statute, law, trade usage or otherwise howsoever) into these Terms (including in particular any which may in any way relate to quality or fitness for any particular purpose) are hereby expressly excluded from the contract.
- 23.3 Idria their officers, directors, employees, affiliates, or agents do not make any warranty as to the results that may be obtained from the use of the Services or as to the accuracy, reliability, suitability or content of the Services.

24. Equipment and Technical Specifications

The Customer acknowledges that for various Services provided by Idria access to the Internet (World Wide Web) is required and the Customer is responsible for any service fees related to such Internet access. Additionally, the Customer is responsible for providing all equipment and technical specifications required to access Idria's Services. These can be different for various solutions

25. Online Services

25.1 The Customer consents and acknowledges that they are not permitted to:

- (a) Access or attempt to access any of the Services provided online by Idria by any means other than through the interface that is provided by Idria unless specifically agreed to in writing by Idria;
- (b) Access or attempt to access any of the Services provided by Idria online through any automated means (including use of scripts or web crawlers) and shall ensure that they comply with instructions set out in any robots.txt file present on the Services;
- (c) Engage in any activity that interferes or disrupts the Services (or the servers and networks which are connected to Idria's online Services);

25.2 Idria may cease (permanently or temporarily) providing the online Services (or any features of the online Services) without prior notice.

26. Learning Management System

26.1 To access the Learning Management System the Customer acknowledges that they are required to register with Idria or an applicable Idria channel and obtain an account and password. The information provided to Idria during the registration process will assist Idria in offering content, customer service, and network management.

26.2 The Customer agrees and understands that they are solely responsible for maintaining the confidentiality of passwords associated with any account they use to access the Services. Accordingly, the Customer agrees that it will be solely responsible to Idria for all activities that occur under their account.

26.3 The Customer acknowledges and agrees that if Idria disables access to their account, they may be prevented from accessing the Services, their account details or any files or other content which is contained in the account.

27. Defaults and Termination

27.1 Upon any default or breach of these Terms by the Customer, Idria may at its sole discretion, amongst other things, retain all monies paid and/or cease further deliveries and/or take immediate possession of any Product not paid for, without prejudice to any other of its rights and without being liable in any way to any party.

27.2 Idria may terminate these Terms by notice in writing to the Customer if:

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- (i) the Customer breaches these Terms and does not rectify the breach within seven (7) days of receiving a written request from Idria that it be rectified;
- (ii) an order is made that the Customer be wound up;
- (iii) an administrator, receiver or controlled is appointed to the Customer;
- (iv) the Customer otherwise becomes insolvent.

28. Set Off

The Customer acknowledges and agrees that Idria may set off any amount owed by Idria to the Customer including, without limitation, any amount to be refunded or used as credit by the Customer) against any Monies Owed to Idria (including, without limitation, any administration or cancellation fees payable by the customer).

29. Severability

Any part hereof being a whole part of a clause shall be capable of severance without effecting any other part of these Terms. Any provision of these Terms which is invalid or unenforceable will be read down to the extent necessary, and the remaining provisions will continue unaffected.

30. GST

- 30.1 The Customer represents and warrants to Idria that each booking by the Customer of a participant in a Training Course relates to the employment related skills of that participant undertaking the Training Course.
- 30.2 To the extent that Idria makes a taxable supply of Products and/or Services on which GST is imposed:
 - (i) the consideration payable or to be provided for that supply but for the application of this clause ("**GST Exclusive Consideration**") is increased by, and the Customer must also pay to Idria, an amount equal to the GST payable by Idria on that supply; and
 - (ii) the amount by which the GST Exclusive Consideration is increased must be paid to Idria by the Customer without set off, deduction or requirement for demand, at the same time as the GST Exclusive Consideration is payable or to be provided.

31. Privacy

- 31.1 The Customer agrees that Idria may make any inquiries it deems necessary to investigate the Customer's creditworthiness including undertaking inquiries with financial institutions, credit reporting agencies, any personal credit and/or consumer credit information providers ("**Sources**").
- 31.2 The Customer authorises the Sources to disclose any information concerning its creditworthiness in their possession to Idria. The Customer agrees that Idria may disclose any information in its possession concerning the Customer's creditworthiness to the Sources.
- 31.3 These Terms are subject to Idria's [Privacy Policy](#).
- 31.4 The Customer's personal identification and contact details may be required from time to time as part of the registration process for Idria's Products and Services, or as part of the continued use of the Products and Services.

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- 31.5 The Customer acknowledges that any personal information provided by the Customer to Idria will be accurate and correct.
- 31.6 Any information that is untrue, inaccurate, not current or incomplete, or Idria has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Idria has the right to suspend or terminate the Customer's account and refuse any and all current or future use of the Services, or any portion thereof.

32. Assignment

The Customer may not assign or attempt to assign any of its rights and obligations under these Terms without the written consent of Idria.

33. General

Idria may amend these Terms at any time, by posting a notice on Idria's website. By continuing to place orders for Products and/or Services, the Customer will be deemed to have accepted the revised terms.

Please report any breach of these Terms to info@idria.com.au.

Idria Pty Ltd:

Victoria

Level 2, 181 Fitzroy St, St Kilda Vic 3182

T 1300 866 727

W idria.com.au