

Terms and Conditions

These Terms and Conditions outline the policies and expectations governing the tutoring services provided by **T.M.J. Tutoring Pty Ltd (CAN 672 218 978) (Supplier)**. By engaging our tutoring services, the **Client** (any individual, parent, or guardian) agrees to the terms outlined below.

BACKGROUND

- A. The Client seeks tutoring services for their child.
- B. The Supplier has the skills, background and experience in providing tutoring services.
- C. The Supplier agrees to provide tutoring services to the Client in accordance with the terms outlined in these Terms and Conditions.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 Definitions

In these Terms and Conditions, unless the context indicates otherwise, the following words have the following meanings:

Background IP means Intellectual Property owned by the Supplier that was created before providing services under these Terms and Conditions or developed independently and unrelated to the services provided.

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).

Commencement Date means the date the Client engages the Supplier's services.

Completion Date means the date on which the Supplier ceases providing services to the Client.

Confidential Information includes any non-public information received or developed by the Supplier while providing services under these Terms and Conditions, which is not publicly available. This includes all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.

Consumer Guarantee refers to the rights and protections afforded under the Australian Consumer Law (Part 3-2, Division 1) that apply to the Supplier's services.

Contract IP means Intellectual Property created by the Supplier while providing services under these Terms and Conditions.

Deliverable refers to the goods or services provided by the Supplier as outlined in these Terms and Conditions.

Facilities refer to any resources provided by the Client, including working space, computer equipment, and internet access, as required for service delivery. It includes access to such resources but also use of them to the extent required by the Supplier in order to perform the Services.

Fees refer to the charges applicable for the services provided, as outlined in these Terms and Conditions.

Force Majeure Event means any occurrence or omission as a direct or indirect result of which the Party relying on it is prevented from or delayed in performing any of its obligations under these Terms and Conditions and which is beyond the reasonable control of that Party and could not have been prevented or mitigated by reasonable diligence or precautionary measures, including forces of nature, natural disasters, acts of terrorism, riots, revolution, civil commotion, epidemic, industrial action and action or inaction by a government agency.

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

Intellectual Property means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, service marks, designs, patents, circuit layouts, plant varieties, business and domain names, database rights, confidential information, know how, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields existing anywhere in the world, whether or not registered or capable of registration, and any goodwill associated with such activity and any applications, renewals and extensions of such rights.

Losses means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

Parties refer to the Supplier and the Client. 'Party' refers to either of them individually.

Personal Information has the meaning as defined in any applicable Privacy Law.

Privacy Law means any legislation or administrative requirement (as amended from time to time) imposing an obligation in relation to the collection, use, disclosure, storage and transmission of Personal Information which is applicable to a Party in the performance of its obligations under these Terms and Conditions, including without limitation any codes, principles or guidelines contained in or arising out of such legislation.

Related Body Corporate has the meaning given in section 50 of the Corporations Act 2001 (Cth) (**Corporations Act**).

Services refer to the tutoring services provided by the Supplier, as outlined in these Terms and Conditions.

Specification refers to the description of services as outlined in these Terms and Conditions.

Supplier's Personnel means any person or persons that the Supplier designates to perform the Services on the Supplier's behalf.

1.2 Interpretations

In these Terms and Conditions, 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) references to numbered clauses and paragraphs are references to the relevant clause or paragraph in these Terms and Conditions.
- (e) 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;
- (f) the headings in these Terms and Conditions are for reference only and do not affect interpretation
- (g) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- (h) the word “including” (and related forms including “includes”) means “including without limitation”.

2 Services

- (a) The Supplier will provide the Services to the Client in exchange for the Client paying the Fees, subject to these Terms and Conditions.
- (b) The Supplier and the Client (or their respective agents and subcontractors) will determine the time and place for service delivery, subject to the availability of the Supplier’s personnel.
- (c) The Supplier will make reasonable efforts to complete the Services at the agreed time and place.
- (d) The Supplier will assign employees, agents, or subcontractors as appropriate to deliver the Services, as outlined in the Specifications.
- (e) The scope, schedule, and Fees for the Services are outlined in these Terms and Conditions.

3 Location

The Supplier will provide the Services at locations agreed upon with the Client.

4 Fees

4.1 Payment of Fees

- (a) In exchange for the Services provided under these Terms and Conditions, the Client agrees to pay the Fees.
- (b) The Fees are charged at an hourly rate, as detailed in these Terms and Conditions.

- (c) The Fee per tutorial is calculated based on the duration of the session, multiplied by the hourly rate. The minimum fee for a tutorial is 50% of the hourly rate specified in these Terms and Conditions. The Fee per tutorial for a tutorial in excess of the minimum fee shall be calculated using 15-minute increments of the hourly rate. For example, if a tutorial has a duration of 50 minutes, the Fee shall be 50% of the hourly rate, plus two 15-minute increments of the hourly rate. If the Client cancels a scheduled service within 24 hours, the Supplier reserves the right to charge the full Fees at their discretion if appropriate.
- (d) The Client acknowledges that the Fees are exclusive of any GST that may be charged by the Supplier to the Client, and therefore, the Supplier will be entitled to add on GST.

4.2 Guarantee

- (a) If, after the first occasion on which the Services are delivered by the Supplier in accordance with these Terms and Conditions, the Client is not totally satisfied with the provision of the Services (including the Specifications):
 - (i) the Supplier will not charge the Fees to the Client in respect of that occasion; and
 - (ii) the Client shall have the right to request that the Client and the Supplier renegotiate and, where agreed, amend these Terms and Conditions
- (b) Clause 4.2(a) shall not apply if the Client is not totally satisfied with the provision of the Services for reasons caused by, or arising from, or which are in any way related to, the conduct of the Client.

4.3 Invoicing

- (a) The Supplier will provide the Client with a tax invoice in accordance with the GST Law in relation to fees payable under this clause 4.
- (b) Payment will be made by the Client to the Supplier within seven days after receiving the Supplier's invoice.
- (c) When making a payment, the Client must quote relevant reference numbers and the invoice number.
- (d) The invoice referred to in 4.3(b) must include the following details before payment can be approved and forwarded:
 - (i) date of Services;
 - (ii) name of individual provided by the Supplier;
 - (iii) description of Services provided;
 - (iv) time allocated per task; and
 - (v) the ABN of the Supplier.

4.4 Variation of Fees

The Supplier is entitled to vary the hourly rates during the term of these Terms and Conditions with written notice to the Client 14 days prior to the change being implemented.

4.5 Failure to pay

If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in the agreement, the Supplier is entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at the rate of 5% per year accruing daily;
- (b) require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
- (c) not perform any further Services (or any part of the Services).

4.6 Disputed invoices

If the Client disputes the whole or any portion of the amount claimed in an invoice submitted by the Supplier, the Client must:

- (a) pay the portion of the amount stated in the invoice which is not in dispute in accordance with the terms of payment set out in these Terms and Conditions; and
- (b) notify the Supplier in writing (within 5 days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.

5 Supplier's Personnel

- (a) If the Client:
 - (i) provides written notice to the Supplier.
 - (ii) has reasonable grounds which have been disclosed and discussed with the Supplier, the Client may require the Supplier to cease to permit a particular person or persons employed by the Supplier or acting as agents or acting as subcontractor of the Supplier to carry out the Services.
- (b) If the Client makes the requirement referred to in clause 5(a), the Supplier must, as soon as it is practicable:
 - (i) cease to provide the Service of the particular person or persons in respect of the Client's business; and
 - (ii) provide the Services of an alternative person or persons as may be reasonably acceptable to the Client.

6 Client's obligations

- (a) During the performance of the Services the Client will:
 - (i) cooperate with the Supplier as the Supplier reasonably requires;
 - (ii) provide the information and documentation that the Supplier reasonably requires;
 - (iii) make available to the Supplier such Facilities as the Supplier reasonably requires; and

- (iv) ensure that the Client's staff and agents cooperate with and assist the Supplier.
- (b) The Client will not charge for the Supplier's use of the Facilities made available by the Client.
- (c) If the Client does not provide the Facilities that the Supplier reasonably requires (and within the time period) to perform the Services, then any additional costs and expenses which are reasonably incurred by the Supplier will be paid by the Client.

7 No partnership or employment relationship

- (a) Nothing in these Terms and Conditions constitutes the relationship of employer and employee between the Client and the Supplier or between the Client and the Supplier's Personnel.
- (b) It is the express intention of the Parties that any such relationships are denied.

8 Use of subcontractors

- (a) The Supplier is permitted to use other persons to provide some or all of the Services.
- (b) Subject to clause 8(c), any work undertaken by any of the Supplier's subcontractors will be undertaken to the same standard as stated in these Terms and Conditions and the Specification.
- (c) To the extent that the terms of any subcontract stipulate a higher standard for any of the Services than the standards set out in these Terms and Conditions (including as to timing or quality), any Services provided by the relevant subcontractor will be governed by the terms and conditions of that subcontractor's subcontract.

9 Disclosure and ownership of Intellectual Property

- (a) The Parties agree that, other than as expressly provided in this clause, nothing in these Terms and Conditions transfers or grants to any party any right, title or interest in or to any Intellectual Property in any Background IP. The Supplier grants to the Client a worldwide, royalty free, perpetual, irrevocable, transferable, non-exclusive licence to use the Background IP to the extent necessary for the Client to derive full benefit from its acquisition of the Deliverables.
- (b) The Client acknowledges that ownership of the Contract IP remains vested in the Supplier. The Supplier grants to the Client an exclusive, perpetual, fully paid-up, irrevocable, worldwide licence to use the Contract IP for the sole purpose of enabling the Client to derive full benefit from its acquisition of the Deliverables.
- (c) The Supplier agrees to indemnify the Client fully against all liabilities, costs and expenses which the Client may incur if the Contract IP or Background IP infringes the rights of a third party, save that the Supplier will have no indemnity obligation if any infringement, suspected infringement or alleged infringement of the Contract IP or Background IP arises from:
 - (i) use of the Deliverables in combination by any means and in any form with other goods not specifically approved by the Supplier;
 - (ii) use of the Deliverables in a manner or for a purpose not reasonably contemplated or not authorised by the Supplier;

- (iii) modification or alteration of the Deliverables without prior consent in writing of the Supplier; or
 - (iv) any transaction entered into by the Supplier relating to the Deliverables without the Supplier's prior consent in writing.
- (d) The obligations accepted by the Parties under this clause 9 survive termination or expiry of these Terms and Conditions.

10 Confidentiality

- (a) A Party which receives Confidential Information (**Recipient**) from the other Party (**Discloser**) must keep the Discloser's Confidential Information confidential and not deal with it in any way that might prejudice its confidentiality.
- (b) The Recipient's obligations in relation to the Confidential Information will continue for as long as the Confidential Information is maintained on a confidential basis by the Discloser.
- (c) At the Termination Date, or when earlier directed by the Discloser:
 - (i) all Confidential Information must be returned to the Discloser, including all copies of the Confidential Information or any extracts or summaries of the Confidential Information that the Recipient makes and any software that the Recipient creates based on the Confidential Information; and
 - (ii) the Recipient must erase and destroy any copies of any software containing or comprising the Confidential Information in the Recipient's possession or under the Recipient's control or that may have been loaded onto a computer possessed or controlled by the Recipient.
- (d) The Confidential Information does not include information which:
 - (i) is generally available in the public domain otherwise than as a result of a breach of clause 10(a) by the Supplier; or
 - (ii) was known by the Recipient prior to the Discloser disclosing the information to the Supplier.
- (e) The Recipient agrees that the Discloser may require any of the Recipient's personnel to sign a confidentiality agreement in a form that the Discloser approves, as a condition of the Discloser's acceptance of any of the Recipient's personnel.
- (f) The Recipient agrees to indemnify the Discloser fully against all liabilities, costs and expenses which the Discloser may incur as a result of any breach of this clause 10 by the Recipient.
- (g) The Recipient acknowledges that damages may be an inadequate remedy for breach of this clause 10 and that the Discloser may obtain injunctive relief against the Recipient for any breach of this clause 10.
- (h) The obligations accepted by the Recipient under this clause 10 survive termination or expiry of these Terms and Conditions by the cancellation of Services.

11 Privacy

- (a) The Client is responsible for obtaining all relevant consents from, and providing all relevant notices to, individuals whose Personal Information is provided by the Client to the Supplier in connection with these Terms and Conditions so as to ensure that the Supplier's dealings with that information pursuant to these Terms and Conditions comply with the Supplier's obligations under any Privacy Laws.
- (b) The Client must indemnify the Supplier against, and must pay the Supplier on demand the amount of, all Losses, liabilities, costs and expenses arising out of its failure to comply with clause 11(a).
- (c) The Client must:
 - (i) immediately notify the Supplier if it becomes aware of any unauthorised access to, or unauthorised disclosure of, Personal Information under its control by virtue of these Terms and Conditions, and provide advice as to whether it considers that such security breach may result in serious harm to any individual to whom the information relates;
 - (ii) comply with any directive from the Supplier as to which Party will discharge any statutory reporting obligation arising from the incident;
 - (iii) conduct or assist the Supplier in conducting a reasonable and expeditious assessment of the breach or suspected breach; and
 - (iv) ensure compliance with all mandatory data breach reporting obligations arising out of the breach or suspected breach.]

12 Warranties, liability and indemnities

12.1 Warranties

- (a) The Supplier warrants that it will use reasonable care and skill in performing the Services, to the standard generally accepted within the private tuition industry.
- (b) If the Supplier performs the Services (or any part of the Services) negligently or materially in breach of these Terms and Conditions, including any part of the Specification, then, if requested by the Client, the Supplier will re-perform the relevant part of the Services, subject to clauses 12.6(a) and 12.6(b) below.
- (c) The Client's request referred to in clause 12.1(b) must be made within 14 days of the date upon which the Services are said to have been performed negligently or materially in breach of these Terms and Conditions.

12.2 Insurances

The Supplier must take out any insurances prescribed by law.

12.3 Employees and subcontractors

- (a) The Supplier covenants that the Supplier is solely responsible for the payment to the Supplier's employees and agents and subcontractors of all amounts due by way of salary, superannuation, annual leave, long service leave, fees for service and any other benefits to which they are entitled as the Supplier's employees or agents or subcontractors.

- (b) The Supplier must otherwise comply with legislation applicable to the Supplier's employees and agents.

12.4 Compliance with all laws

Throughout these Terms and Conditions the Supplier must comply at the Supplier's own cost and expense with all acts, ordinances, rules, regulations, other delegated legislation, codes and the requirements of any Commonwealth, state and local government departments, bodies, and public authorities or other authority. This requirement applies to the Supplier or to the Services. The Supplier must indemnify the Client from and against all actions, costs, charges, claims and demands in respect of such action, cost, charge, claim and demand.

12.5 No warranties in relation to completion

The Supplier provides no warranty that any result or objective can or will be achieved or attained at all or by any particular date, whether stated in these Terms and Conditions, the Specification or elsewhere.

12.6 Limitation on liability

- (a) Except in the case of death or personal injury caused by the Supplier's negligence, the liability of the Supplier under or in connection with these Terms and Conditions whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the Fees paid by the Client to the Supplier under these Terms and Conditions. The provisions of this clause will not apply to clause 12.4.
- (b) Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill. The provisions of this clause do not apply to clause 12.4. For the purposes of this sub-clause, "consequential loss or damage" means any Loss that does not arise naturally and according to the usual course of things as a result of a breach of these Terms and Conditions or other event giving rise to such Loss, whether or not such Loss may reasonably be supposed to have been in the contemplation of the Parties at the time they made these Terms and Conditions.
- (c) The Supplier's liability for failure to comply with a Consumer Guarantee is, where permitted by law, limited to:
 - (i) in the case of goods supplied to the Client, the replacement of the goods or the supply of equivalent goods (or the payment of the cost to the Client of the replacement or supply), or the repair of the goods (or the payment of the cost to the Client of the repair); and
 - (ii) in the case of Services supplied to the Client, the supply of the Services again or the payment of the cost to the Client of having the Services supplied again.

12.7 No reliance

Each of the Parties acknowledges that, in entering into these Terms and Conditions, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in these Terms and Conditions. Any conditions, warranties or other terms implied by statute or common law are excluded from these Terms and Conditions to the fullest extent permitted by law.

12.8 Survival of obligations

The obligations accepted by the Supplier and the Client under this clause 11 survive termination or expiry of these Terms and Conditions.

13 Termination

- (a) Either Party may terminate these Terms and Conditions by notice in writing to the other if the Party notified:
 - (i) fails to observe any term of these Terms and Conditions; and
 - (ii) fails to rectify this breach, to the satisfaction of the notifying Party, following the expiration of seven days' notice of the breach being given in writing by the notifying Party to the other Party.
- (b) Either Party may terminate these Terms and Conditions immediately upon the happening of any of the following events:
 - (i) if the other Party commits a material breach of the agreement which is incapable of rectification;
 - (ii) if the Client enters into a deed of arrangement or an order is made for it to be wound up;
 - (iii) if an administrator, receiver or receiver/manager or a liquidator is appointed to the Client pursuant to the Corporations Act; or
 - (iv) if the Client would be presumed to be insolvent by a court in any of the circumstances referred to in the Corporations Act.
- (c) Upon termination of these Terms and Conditions any fees, expenses or reimbursements payable by the Client to the Supplier in respect of any period prior to the Termination Date must be paid by the Client within 14 days after the Termination Date.

14 General

14.1 Force Majeure

- (a) Neither Party has any liability under or may be deemed to be in breach of these Terms and Conditions for any delays or failures in performance of these Terms and Conditions which result from a Force Majeure Event.
- (b) The Party affected by these circumstances must promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than [*number, eg six*] months, either Party may terminate these Terms and Conditions by written notice to the other Party.

14.2 Amendment

These Terms and Conditions may only be amended in writing signed by duly authorised representatives of the Parties.

14.3 Assignment

- (a) Subject to clause 14.3(b), neither Party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under these Terms and Conditions without the prior written agreement of the other Party.
- (b) A Party may assign and transfer all its rights and obligations under these Terms and Conditions to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under these Terms and Conditions.

14.4 Entire agreement

- (a) These Terms and Conditions contains the whole agreement between the Parties in respect of the subject matter of the agreement.
- (b) The Parties confirm that they have not entered into these Terms and Conditions on the basis of any representation that is not expressly incorporated into these Terms and Conditions.

14.5 Waiver

- (a) No failure or delay by the Supplier in exercising any right, power or privilege under these Terms and Conditions will impair the same or operate as a waiver of the same nor may any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (b) The rights and remedies provided in these Terms and Conditions are cumulative and not exclusive of any rights and remedies provided by law.

14.6 Agency, partnership etc

- (a) These Terms and Conditions will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in these Terms and Conditions.
- (b) Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

14.7 Further assurance

Each Party to these Terms and Conditions must at the request and expense of the other do all things reasonably necessary to carry out the provisions of these Terms and Conditions or to make it easier to enforce.

14.8 Severance

If any provision of these Terms and Conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from these Terms and Conditions and rendered ineffective as far as possible without modifying the remaining provisions of these Terms and Conditions, and will not in any way affect any other circumstances of or the validity or enforcement of these Terms and Conditions.

14.9 Announcements

- (a) Subject to clause 14.9(b), no Party may issue or make any public announcement or disclose any information regarding these Terms and Conditions unless prior to such public announcement or disclosure it furnishes the other Party with a copy of such announcement or information and obtains the approval of the other Party to its terms.
- (b) No Party will be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

14.10 Notices

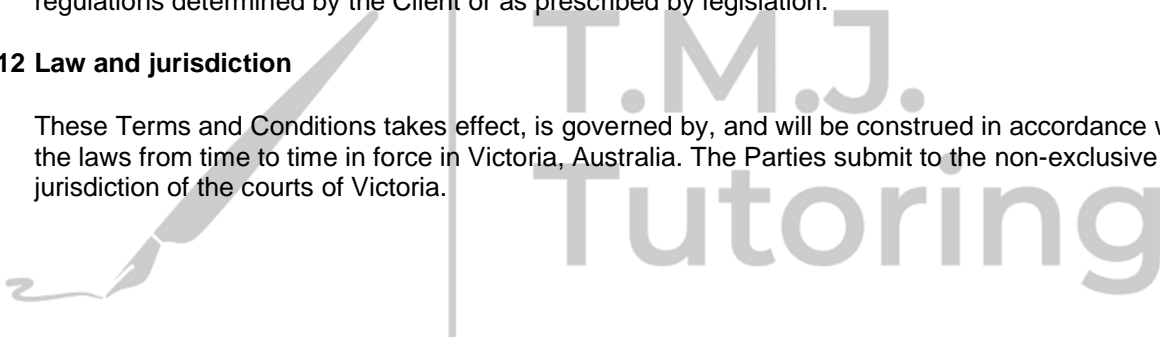
A notice or other communication connected with these Terms and Conditions has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by pre-paid post to the address of the addressee as set out in these Terms and Conditions, or sent by email to the email address of the addressee.

14.11 Work, health and safety

The Supplier must comply with all relevant work, health, safety and welfare standards and regulations determined by the Client or as prescribed by legislation.

14.12 Law and jurisdiction

These Terms and Conditions takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.



Perseverance Drives Success