

# Terms and Conditions - Equinox IT Training Courses

Equinox Limited (“we”, “us”, “our”) provides seminars, courses, and other events (“Courses”) and provides other training, mentoring, and consultancy services (together, including the Courses, the “Services”) to individuals, businesses, organisations, and other entities (“you”, “your”). We agree to supply the Services, and to license you to use any Course documentation, training materials, examination materials, software, and other materials that we supply to you (the “Licensed Materials”), upon the terms and conditions set out below (these “Terms and Conditions”).

## Terms and Conditions

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### 1 Scope

- 1.1 Our contract with you (this “Contract”) comprises these Terms and Conditions, together with any other conditions that our authorised representative notifies to you in writing prior to us commencing performance of the Services or supply of the Licensed Materials (whichever is later)(the “Special Terms and Conditions”).
- 1.2 These Terms and Conditions shall be read subject to the Special Terms and Conditions. Special Terms and Conditions will be set out in an accompanying ‘Terms of Reference’ document for In-House training courses or in written communications on public course bookings. In the event of any conflict of meaning between these Terms and Conditions and the Special Terms and Conditions, the latter shall prevail.

### 2 Application

- 2.1 By signing the ‘Training Terms of Reference’ document or registering for a Public Course, you are acknowledging that you have read the terms of this Contract and you are agreeing that the terms of this Contract shall apply to the Services and Licensed Materials:
- 2.2 Where you are requesting the Services or Licensed Materials on behalf of another person (whether an individual or a company, society, partnership or other legal entity), you:
  - a. warrant and represent that you are authorised to request the Services and Licensed Materials on behalf of that person; and
  - b. must ensure that person reads this Contract and agrees to be bound by all of its terms.
- 2.3 This Contract constitutes the complete and exclusive statement of the agreement between the parties with respect to the supply of the Services and Licensed Materials. This Contract supersedes all proposals, oral or written, and all other communications between you and us relating to the supply of the Services and Licensed Materials.
- 2.4 If you do not accept the terms of this Contract, you must notify us and refrain from booking, or using any Services or Licensed Materials.

### 3 Courses

- 3.1 We can provide Course participants with lunch, morning tea, and afternoon tea each day, if required. We will endeavour to accommodate special dietary requirements of a Course participant that are notified to us at least 10 business days before the Course commencement date.

- 3.2 We are not responsible for any travel, accommodation and other disbursements incurred by Course participants as a result of attending the Course; such costs shall be the responsibility of the Course participants.

## 4 Course changes

- 4.1 We may be required to change or cancel a Course (including changing the Licensed Materials, venue, or dates for that Course) after you have booked it (for example, if the venue or other required resources are no longer available on the scheduled course dates, or due to other circumstances beyond our control). In this event, we will endeavour to notify you as soon as practical to advise of such change or cancellation. We will discuss with you any required changes to the Course and endeavour to agree such changes with you. Where we cancel a Course under this clause 4.1, we will refund any Fees that you have already paid for that Course.
- 4.2 For Public Training courses, subject to clause 4.5, you may cancel or amend a Course booking:
- a. at no cost **provided that** you must give us written notice of the cancellation or amendment at least 10 business days prior to the Course commencement date;
  - b. within 10 business days before the Course commencement date, in which case 50% of the affected Course Fee will be payable by you to us upon cancellation;
- 4.3 If you do not cancel or amend a Course booking before the Course commencement date, 100% of the affected Course Fee will be payable by you to us within five business days of the Course commencement date.
- 4.4 For In-House Training courses you may cancel or amend an In-House course booking up until the accompanying 'Training Terms of Reference' document is signed. After this point cancellation will incur the full course fee. Any payment owing as a result of cancellation will be payable in accordance with clause 9.1.
- 4.5 Where you cancel an In-House training course and we have incurred expenses such as venue hire, catering, travel, accommodation, living expenses, couriers, and other out-of-pocket expenses in relation to that Course booking, we may invoice you for such expenses at cost. You agree to promptly pay such invoices in accordance with clause 9.1.

## 5 Intellectual Property

- 5.1 You acknowledge and agree that all intellectual property rights including, without limitation, all rights under any applicable patents, trademarks, copyright, confidential information, and trade secrets that:
- a. subsist in the Courses or Licensed Materials;
  - b. subsist in any other pre-existing works, concepts, designs, inventions, methodologies, processes, procedures, layouts, specifications, reports, modules, templates, techniques, and other information that we provide or disclose to you (and in adaptations, translations, or derivative works of such items); and
  - c. come into existence as a result of us performing the Services (which rights shall vest in us (or our licensors, as the case may be) immediately upon coming into existence),
- 5.2 (together, the “**Intellectual Property**”), are and shall remain our property (or our licensors’ property, as the case may be).
- 5.3 Except as expressly provided in this Contract, you shall not acquire, by implication or otherwise, any right, title, interest, or licence in or to the Intellectual Property. You

acknowledge and agree that you shall not at any time contest or dispute our ownership (or our licensor's ownership, as the case may be) of the Intellectual Property.

- 5.4 Upon our request at any time, you will execute all deeds of assignment and documentation, and do all other things necessary (and procure that your employees, contractors and agents execute all deeds of assignment and documentation and do all other things necessary) to give full effect to the provisions of clause 5.1.
- 5.5 Subject to clause 14.4, each party agrees that it shall not use the trademarks of the other (the "**Owner**") without the Owner's prior written consent in each case and upon such terms as may be stipulated by the Owner as a condition of its consent.
- 5.6 You must not use the Intellectual Property in order to compete with us or our business or in a manner that you know or ought reasonably to know is, or may be, detrimental to our interests or business.
- 5.7 We warrant that IP used during the delivery of training services is either fully owned by us or used under licence or with explicit permission from a Third Party.

## 6 Licence

- 6.1 Provided that you comply at all times with the terms of this contract (including the payment of all applicable fees), we grant you a licence which is non-exclusive, non-transferable and non-sub-licensable to use the Licensed materials upon the terms of this Contract (the "**Licence**").
- 6.2 The Licence is personal to you, which means that the Licensed Materials may be used only by you and only for your own internal training and development purposes. If you are a company, society, partnership or other entity that is not an individual, your employees who have attended a Course may also use the Licensed Materials for that Course under the Licence (strictly in accordance with clause 7 and for their own personal training and development only) for so long as they remain under your employ.
- 6.3 The Licensed Materials are licensed, not sold, to you, and all rights not expressly granted in this clause 6 are reserved to us.
- 6.4 We may, from time to time in our sole discretion, supply corrected or revised versions of the Licensed Materials to you, but we shall be under no obligation to do so.

## 7 Licence conditions

- 7.1 You must:
  - a. pay all applicable Fees payable under this Contract;
  - b. use the Licensed Materials strictly in accordance with the terms of this Contract;
  - c. not copy, adapt, modify, sell, rent, sublicense, transmit, distribute, or otherwise make available, the Licensed Materials (or any part thereof) except as expressly permitted by the terms of this Contract;
  - d. not remove any copyright, trade mark, or proprietary rights notices included in or on the Licensed Materials (or any part thereof) and you must reproduce all such notices on any permitted copies of the Licensed Materials made by you;
  - e. indemnify us against all liabilities, costs and expenses (including legal costs on a solicitor and own client basis) which we incur as a result of your breach of any term of this Contract; and
  - f. where you are permitted to make the Licensed Materials available to a person under clause 7.1(c), ensure that person is made aware of (and agrees to) the terms of this

Contract and ensure that person always uses the Licensed Materials in accordance with the terms of this Contract.

- 7.2 Nothing in this Contract obligates you to use the Licensed Materials. The initial use, the extent of use and the continuation of use of the Licensed Materials by you shall at all times be within your discretion and control. Notwithstanding the foregoing, your failure to use Licensed Materials shall not relieve you of any obligations under this Contract, including, without limitation, payment obligations.

## 8 Fees

- 8.1 You will pay the fees applicable for the Services (the “**Fees**”). For In-House courses the Fees are specified in the Special Terms and Conditions. For Public courses the fees are as per the on-line course registration process or as otherwise communicated with you in writing.
- 8.2 The Fees are stated and payable in New Zealand dollars and are exclusive of all taxes (including Goods and Services Tax as that term is defined in the New Zealand Goods and Services Tax Act 1985), duties, and other government charges (together, “**Taxes**”) as and where they may apply. You shall pay such Taxes in addition to the Fees upon invoice.
- 8.3 For In-house training courses, the Fees do not include disbursements such as travel, accommodation, living expenses, couriers, and other costs directly incurred by us in providing the Services, which will be payable by you.
- 8.4 Unless otherwise agreed in the Special Terms and Conditions, the Fees for In-House courses do not include course catering or provision of the training room.

## 9 Payment

- 9.1 Unless otherwise agreed by us in the Special Terms and Conditions, you must pay the Fees for Courses to us in full in cleared funds before the Course commencement date (by cheque, credit card, or direct deposit to our bank account). For all other Fees (unless specified otherwise in the Special Terms and Conditions):
- a. we will provide invoices to you for each logical grouping of Service provision; and
  - b. each invoice will be payable (without counterclaim, set off or deduction of any kind) on or before the 20th of the month following the date of invoice.
- 9.2 If you fail to pay any sum by the due date for payment, we may (without prejudice to any other remedy available to us):
- a. suspend provision of some or all of the Services or Licensed Materials until the payment is made; and
  - b. charge you interest on the unpaid sum at a rate of 2% per annum above our bank’s commercial overdraft rate (calculated on a daily basis from the due date until the date of payment).
- 9.3 Unless otherwise specified in the Special Terms and Conditions, you shall not be liable to pay wages, salary, sick pay, ACC levies, PAYE, or other expenses that may be payable in respect of our employees or contractors involved in performing the Services.

## 10 Change Requests

- 10.1 For In-House training courses, if you wish to change any aspect of the Services or Licensed Materials, you may submit a verbal or written change request to us. If we are willing (or for licensed materials, permitted) to accommodate the change request, we will provide you with written notification in writing, including setting out any variations

to the Services (including Course timetables), Licensed Materials, Fees, and any other matter that would result from the change (the “**Proposal**”).

- 10.2 If you provide us with written acceptance of the Proposal, the Services and Licensed Materials (as the case may be) will be amended accordingly **provided that**:
- a. nothing shall oblige us to entertain any change request or issue any Proposal; and
  - b. until we receive your written acceptance, we shall be under no obligation to change the Services or Licensed Materials.

## 11 Personnel

- 11.1 Each party agrees that if any of its personnel are working at the other’s premises, it shall ensure that its personnel comply with all reasonable rules and policies that are notified by the other party in writing. Subject to this requirement, our personnel engaged in the performance of the Services shall at all times remain under our direction and control.
- 11.2 If you are dissatisfied with any of our personnel involved in performing the Services, you may request us to replace that person, stating your reasons for the request. If we agree to replace the person, you will bear all associated costs (except where we agree that the person has been negligent or otherwise guilty of misconduct, in which case we will bear the costs of replacing that person).
- 11.3 Where we are required to perform any Services at your premises, you agree to provide us with such office accommodation and facilities as we may reasonably require to enable us to perform the Services.
- 11.4 You shall not employ or in other way engage the services of any of our personnel at any time during the term of the Training Services or six months thereafter. We shall not employ or in other way engage the services of any of your personnel at any time during the term of the Training Services or six months thereafter.

## 12 Information

- 12.1 You agree to promptly provide us with all information concerning your operations and activities which we may reasonably require for the performance of the Services. Where we agree to perform any Services at your premises, you shall grant us such access to your personnel and premises as we may reasonably require to enable us to perform the Services.
- 12.2 If at any time during the provision of the Services you become aware that we have made any incorrect assumptions, taken any incorrect directions, or received any incorrect information from you, you shall inform us immediately in writing.

## 13 Quality and standards

- 13.1 We will endeavour to provide the Services in accordance with the standards of skill and care reasonably expected of professional consultants in the information technology field, and in the manner specified in any Special Terms and Conditions.
- 13.2 Any timeframes applicable to the performance or supply of the Services and Licensed Materials are our best estimates of the time required to perform and supply those items. Although we will endeavour to achieve those timeframes, we will have no liability to you for any delay or failure in achieving those timeframes.

## 14 Confidentiality

- 14.1 Each party (the “**Recipient**”) shall keep confidential and shall not disclose to any third party any information relating to the other party or its operations (including the terms of this Contract) without the prior consent of the other party.
- 14.2 You acknowledge that the Licensed Materials and other Intellectual Property constitute confidential information of ours. Subject to the rights granted under clause 6.2, you agree to hold in the strictest confidence all Licensed Materials and other Intellectual Property that we disclose or otherwise make available to you.
- 14.3 You agree to put policies and procedures in place to maintain the security and confidentiality of the Licensed Materials, and to ensure that any employee who receives the Licensed Materials under clause 6.2 returns all copies thereof in his or her possession or control when he or she leaves your employ.
- 14.4 Notwithstanding clause 14.1, you shall not unreasonably withhold permission for us to publicise our involvement in the provision of the Services and Licensed Materials to you for marketing purposes.
- 14.5 This clause 14 shall not apply to information that is required by law to be disclosed or is:
- a. or becomes, public knowledge otherwise than through the default of the party concerned;
  - b. already in the possession of the Recipient at the time of disclosure by the other party; or
  - c. legally acquired by the Recipient from a third party without breaching any confidentiality obligations of that third party.

## 15 Termination

- 15.1 A party may terminate this Contract immediately by written notice to the other if:
- a. the other party breaches any term of this Contract and does not remedy such breach within four weeks of receiving written notice from the party not in default; or
  - b. the other party becomes, or threatens to become, or is at risk of becoming, bankrupt or subject to any form of insolvency administration including, without limitation, any resolution, procedure or proceedings relating to its liquidation, inability to pay its debts as they fall due, insolvency or appointment of a receiver, receiver and manager, liquidator, provisional liquidator, statutory manager or similar officer, or makes an assignment for the benefit of its creditors.
- 15.2 Notwithstanding clause 15.1, we may terminate this Contract:
- a. without cause by providing you with eight weeks’ written notice; and
  - b. immediately by written notice if you breach any provision of clause 7 or clause 14.
  - c. Upon termination of this Contract for any reason, you must:
    - I. promptly pay all outstanding Fees that are payable under this Contract;
    - II. immediately cease to use the Licensed Materials (and you shall have no further right to use the Licensed Materials, or any other Intellectual Property, in any manner or for any reason);
    - III. promptly return, destroy, or erase (as directed by us) all copies of the Licensed Materials and other Intellectual Property that are in your possession or control; and
    - IV. within fourteen days after termination, certify in writing that you have complied with your obligations under clause 15.2(III III).
- 15.3 Termination under clause 15.1 shall be without prejudice to:
- a. any rights we have against you which accrued prior to termination; and
  - b. the provisions of this Contract which, by their nature, survive termination, including (without limitation) clauses 5, 7, 11, 14 15, 16, and 17.

## 16 Warranties

16.1 To the maximum extent permitted by law, the Services and Licensed Materials are provided on an “as is” basis, without:

- a. any warranties of merchantability, suitability, non-infringement, lack of viruses, accuracy, completeness, currency, title, and fitness for a particular purpose; and
- b. any other warranties or representations of any kind (whether express, implied, or statutory).

16.2 You acknowledge and agree that:

- a. you have exercised your independent judgement in acquiring the Services and Licensed Materials, and you have satisfied yourself as to their suitability;
- b. you have not relied on any representations made by us that are not expressly stated in this Contract;
- c. you have not relied on any descriptions, illustrations, or specifications contained in any documents, catalogues, or publicity materials produced by us; and
- d. you are solely responsible for any decisions or actions that you take in reliance upon the Services or Licensed Materials.

16.3 Where you acquire the Services or Licensed Materials for the purposes of a business (or hold yourself out as acquiring them for the purposes of a business), you agree that the guarantees, rights, and remedies provided under the Consumer Guarantees Act 1993 shall not apply to the supply of those Services or Licensed Materials.

## 17 Liability

17.1 To the maximum extent permitted by law:

- a. we will not in any circumstances (including, without limitation, negligence or breach of statutory duty) be liable for any loss of data, loss of profits, loss of revenue, economic loss, or any indirect, consequential, special, exemplary or incidental damages; and
- b. our liability to you arising out of any and all claims whatsoever under this Contract (irrespective of the cause of action) will not in any circumstances exceed in aggregate the total amount of the Fees paid by you to us in the twelve months preceding the date on which the claim arose.

17.2 No action arising out of or in connection with this Contract, regardless of form, may be brought by you more than two years after the cause of action arose.

## 18 General

18.1 Neither party will be liable for any delay in meeting or failure to meet its obligations under this Contract to the extent that such delay or failure is caused by any circumstances or events outside that party’s reasonable control (a “**Force Majeure Event**”). If a party is prevented from performing its obligations under this Contract due to a Force Majeure, it shall promptly notify the other party and use its best endeavours to minimise the effect of the Force Majeure Event. If we incur any additional costs as a result of you being subject to a Force Majeure Event, such costs shall be payable by you, but we will consult with you in advance of incurring such costs and endeavour to minimise them.

18.2 Any notice or other document required or permitted to be given under this Agreement shall be validly given if delivered personally (including by courier service), sent by registered mail, sent by email, or sent by facsimile to the addressee’s number or address as notified to the sender from time to time. A notice sent by registered mail

will be deemed to be received five business days following the day on which it was posted. A notice sent by email or facsimile will be deemed to be received on the day on which it is sent (unless it is sent on a day other than a business day, in which case it will be deemed to be received on the next business day).

- 18.3 You may not assign or transfer any of your rights or obligations under this Contract except with our prior written consent. We may assign, transfer, or subcontract any of our rights or obligations under this Contract at any time by giving you written notice.
- 18.4 This Contract shall be governed by, and construed in accordance with, New Zealand law. The parties hereby submit to the jurisdiction of the New Zealand Courts and agree that the New Zealand Courts are a convenient forum in which to hear and resolve any disputes or issues arising out of or in relation to this Contract.
- 18.5 No provision of this Contract may be modified except by written agreement signed by the parties.
- 18.6 You consent to receiving communications from us electronically and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You agree to be bound by any agreement reached through electronic communications in terms of the Electronic Transactions Act 2002.
- 18.7 Clause headings are for convenience of reference only, and shall not affect the interpretation of this Agreement. Terms that are defined in this Contract (in bold and quotation marks) shall have their defined meaning each time they appear elsewhere in this Contract.
- 18.8 The relationship between the parties is one of independent contractors and nothing in this Contract shall constitute a joint venture, partnership, or any other business, financial, employment, or other relationship between the parties.
- 18.9 If any provision of this Contract is held to be invalid or unenforceable then such provision will be severed from this Contract, and all remaining provisions shall remain in full force and effect.
- 18.10 The failure of any party at any time to insist upon strict performance of any obligation or provision contained in this Contract shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of that same obligation or provision at a future time.