

GO-TRAIN INDUSTRY PTY LTD - ABN 46 088 194 478
TERMS AND CONDITIONS OF TRADING

1. **General** - Any order or agreement to supply services placed by a purchaser is deemed to be an order incorporating these terms and conditions notwithstanding any inconsistencies which may be introduced in the purchaser's order, correspondence or acceptance unless expressly agreed to by Go-Train Industry Pty Ltd ('the Company') in writing.
2. **Quotations and Prices** - the prices quoted are as agreed between both parties at the time of estimation and may be subject to alteration without notice to the purchaser due to any increase in the Company's costs between the date of estimation and the date or dates of service provision. Unless otherwise expressly agreed by the Company in writing, all services will be charged for at the prices ruling at the date or dates of delivery. All prices estimated are exclusive of GST, if applicable. All prices are expressed in Australian dollars unless expressly stated otherwise. An estimation is not an offer by the Company to provide a service and may be withdrawn without any notice; any order given in respect of an estimation is not binding on the Company until accepted by the Company in writing.
3. **Orders** - Orders and variations to orders must be in writing and be accepted by the Company and may not be cancelled or altered in whole or in part without the Company's written consent. The Company may decline, by written notice to the purchaser, any order in whole or in part, at any time prior to delivery of the service or performance of the service, in which case the Company will be under no obligation in respect of the order.
4. **Terms of Payment** - Go-Train Industry Pty Ltd requires Payment in Full prior to delivery of the service; unless a credit account has been previously established in which case payment in full shall be received no later than 14 days from date of invoice. The Company reserves the right to vary the terms of payment and to require payment in full prior to delivery should the creditworthiness of the purchaser at any time not be established prior to sale or become, in the Company's opinion, unsatisfactory.
5. **Cancellation of Services** - The following service cancellation terms apply.
 - 7 days prior to booking - full refund of any monies paid.
 - < 7 days but >2 days prior to booking - 50% of cost as estimated or as per price list WILL be payable.
 - 2 days or less - 100% of cost as estimated or as per price list WILL be payable.
6. **Claims** - Any claim by the purchaser for incorrect supply of services **MUST BE NOTIFIED TO THE COMPANY IN WRITING WITHIN 7 DAYS** after delivery of the service to the purchaser and any claim which the purchaser does not notify within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.
7. **Description** - Any description of the service is given by way of identification only and the use of such description shall not constitute the contract of a sale by description.
8. **Implied Terms** - It is hereby acknowledged by the Company that, under applicable State, Territory and Commonwealth law, certain conditions and warranties may be implied in the contract between the Company and the purchaser and rights and remedies conferred upon the purchaser and other parties in relation to services which cannot be excluded, restricted or modified by agreement ("Non-excludable Rights"). The limitations below are subject to these Non-excludable Rights. Subject to the above, the Company disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the purchaser or other parties by statute the common law equity trade custom or usage or otherwise howsoever and all such conditions and warranties and all such rights and remedies are hereby expressly excluded other than any Non-excludable Rights. Where so permitted the liability of the company for a breach of a Non-excludable Right is limited, at the Company's option, in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again.
9. **Indirect Loss** - The Company shall not be liable (whether before or after discharge of the contract or otherwise) for any loss or damage to the purchaser as user arising from or caused or contributed to by negligence of the Company, its servants or agents, nor shall the Company be liable for special, incidental, indirect or consequential loss or damage suffered by the purchaser as user as a result of a breach by the Company of its obligations or otherwise including but not limited to economic or moral loss, loss of profits or revenue or costs arising from such breach.
10. **Indemnity** - The purchaser shall indemnify and keep indemnified and hold the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company, and from and against all actions, proceedings, claims or demands made against the Company, arising from any of the following:
 - a) As a result of the purchaser's failure to:
 - Comply with relevant WHS legislation;
 - Comply with all relevant state and federal legislation
 - Take any other reasonable precautions either to bring to the attention of any potential users of the service any dangers associated with service, or to detect any matters in relation to which the Company may become liable, including, without limitation, liability under the Trade Practices Act; or
 - Otherwise comply with any laws, rules, standards or regulations applicable in relation to the service or the use of the service;
 - b) As a result of any other negligence or other breach of duty by the purchaser; or
 - c) As a result of any compliance or adherence by the Company with any instructions of the purchaser in relation to the service or their manner of fabrication.
11. **Delivery** - Unless otherwise expressly agreed by the Company in writing the service will be delivered on the date booked. The Company shall not be liable for any loss or damage howsoever arising as a result or consequence of any failure to deliver or delay in delivery of the service arising from any circumstances of whatsoever nature including in particular, but without limiting the generality of the foregoing including vehicle accident, fire, flood, explosion, strike, lock-out or other industrial act or dispute or the break-down of or accident to plant unavailability or shortage of raw materials, labour, power supplies or transport facilities or failure or inability to obtain licences or act of God or any order or direction of any local State or Federal Government or Government authority or instrumentality, including but not limited to disruption to business due to Covid-19 lock down or infection. If the Company determines that it is or may be unable to deliver within a reasonable time or at all the contract may be cancelled by the Company. In the event of cancellation the purchaser shall have no claim against the Company for any damage loss cost or expense whatsoever. The purchaser shall not be relieved of any obligation to accept or pay for service by reason of any delay in delivery.
12. **Intellectual Property and Risk-**
 - (1) The purchaser shall have no right to redistribute, rebrand, rebadge, or alter any Go-Train Industry Pty Ltd supplied documentation, software, course materials, assessment materials, training materials or intellectual property without express written agreement with Go-Train Industry Pty Ltd
 - (2) The purchaser shall have no right to on sell any Go-Train Industry Pty Ltd intellectual property or materials as per 12.1 above, without the express written permission of Go-Train Industry Pty Ltd
 - (3) The power of sale hereby conferred on the purchaser shall automatically cease if a receiver, or receiver and manager, is appointed over any of the purchaser's assets or if a winding up order is made against or a resolution is passed for the winding up of the purchaser or if the Company at any time revokes the power of sale by notice to the purchaser.
13. **Default in Payment** - The Company will treat any default by the purchaser in payment of any moneys due to the Company as a breach of these terms or conditions.
14. **Waiver** - Failure by the Company to insist upon strict performance of any term, warranty or condition of the contract shall not be deemed as a waiver thereof or of any rights the Company may have and no express waiver shall be deemed a waiver of any subsequent breach of any term warranty and condition.
15. **Subcontracting** - The Company reserves the right to subcontract any part of the service to be supplied.
16. **Notices** - Any notice to be given by the purchaser to the Company shall be sent to the Company's address. No notice shall be deemed to have been given until it is actually received at such address.
17. **Severance** - It is agreed that if any provision of these terms and conditions should be determined to be void by any court of competent jurisdiction, then such determination shall not effect any other provision hereof, and each such other provision shall remain in full force and effect.