

# Training and Consultancy Services Terms and Conditions

## TABLE OF CONTENTS

|     |                                                                 |    |
|-----|-----------------------------------------------------------------|----|
| 1.  | Acceptance of Terms.....                                        | 2  |
| 2.  | Mastergroup's Obligations .....                                 | 2  |
| 3.  | Customer's Obligations and Responsibilities – Training.....     | 2  |
| 4.  | Bookings.....                                                   | 3  |
| 5.  | Payment .....                                                   | 3  |
| 6.  | Provision of Training or Consultancy Services .....             | 3  |
| 7.  | Customer's Obligations and Responsibilities – Consultancy ..... | 5  |
| 8.  | Copyright.....                                                  | 6  |
| 9.  | Liability .....                                                 | 6  |
| 10. | Cancellation of Training Services By Us .....                   | 7  |
| 11. | Termination By Us .....                                         | 7  |
| 12. | Termination or Cancellation by the Customer .....               | 8  |
| 13. | Refunds .....                                                   | 9  |
| 14. | Privacy.....                                                    | 9  |
| 15. | Training Program Changes.....                                   | 9  |
| 16. | Electronically Sending Material.....                            | 10 |
| 17. | GST .....                                                       | 10 |
| 18. | Intellectual Property Rights and Confidentiality .....          | 10 |
| 19. | Limitation of Liability .....                                   | 11 |
| 20. | Warranty.....                                                   | 13 |
| 21. | Respectful Conduct Policy .....                                 | 14 |
| 22. | Dispute Resolution.....                                         | 15 |
| 23. | General.....                                                    | 15 |
| 24. | Definitions and Interpretation .....                            | 19 |

## **MASTERGROUP TRAINING and CONSULTING TERMS AND CONDITIONS**

### **BETWEEN:**

The party so registering for or booking training services with Mastergroup  
(the “**Customer**”)

### **AND**

**MASTER GROUP (AUST.) PTY LTD** (ACN 131 609 008) (“**Mastergroup**”)

### **RECITALS**

- A. Master Group (Aust.) Pty Ltd (referred to as **Mastergroup**, **our** and **us**) offers to provide Training and Consultancy services to the Customer subject to these Terms and Conditions.
- B. The Customer (referred to as the **Customer or attendee**) accepts the offer on these Terms and Conditions.

### **OPERATIVE PART**

#### **1. ACCEPTANCE OF TERMS**

By registering for or booking Training with us, or engage our Consultancy Services, the Customer agrees to be bound by these Terms and Conditions.

#### **2. MASTERGROUP’S OBLIGATIONS**

Mastergroup will provide the Customer with Training and Consultancy Services with professional care and skill.

#### **3. CUSTOMER’S OBLIGATIONS AND RESPONSIBILITIES – TRAINING**

The Customer agrees:

- (a) it is the Customer’s sole responsibility to ensure that the Training as outlined is suitable and appropriate for the Customer attendee’s requirements, needs and circumstances;
- (b) if, at the discretion of Mastergroup, the training is to be conducted in a one-on-one setting, or at a live, face-to-face seminar, the Customer must, and must ensure that its attendees, attend the Training at the scheduled time. Mastergroup may, at its discretion, cancel or deny access to the Training if the Customer or any attendees does not attend the Training within 15 minutes of the scheduled start time.

- (c) if a Training course extends over more than one session, each session is a prerequisite for the subsequent session, and Mastergroup may, at its discretion, deny access to the Customer or any attendee who has not met the prerequisites; and
- (d) Mastergroup may, at its discretion, cancel the Training if the Customer or attendee is unable to understand or follow instruction due to lack of pre-required knowledge.
- (e) Mastergroup shall not be liable for any loss, cost, expense, damage or liability resulting from its cancellation of, or denial of access to, any Training, nor will Mastergroup be liable to refund the Customer for any Training that has been cancelled, or denied access to, in accordance with this clause 3.

#### **4. BOOKINGS**

- 4.1 The Customer is encouraged to book early for Training or Consultancy Services (or both) to avoid disappointment.
- 4.2 Training or Consultancy Services bookings will be confirmed in writing via email and a tax invoice will be issued.

#### **5. PAYMENT**

- 5.1 Unless otherwise agreed to by Mastergroup in writing, training fees are specified out on our Website ([www.agrimaster.com.au/training-and-consultancy](http://www.agrimaster.com.au/training-and-consultancy)).
- 5.2 Payment for Training or Consultancy Services is due and payable at the time of booking. If payment is not received by Mastergroup on or before the due date specified in the tax invoice issued at the time of booking, Mastergroup reserves the right to cancel the Customer's booking immediately by written notice.
- 5.3 Payment for Training or Consultancy Services must be made by Mastercard, Visa card or debit card.
- 5.4 No accounts or payment terms are available for Training or Consultancy Services.

#### **6. PROVISION OF TRAINING OR CONSULTANCY SERVICES**

- 6.1 Mastergroup may, at its discretion, provide Training or Consultancy Services to the Customer as follows:
  - (a) via webinar, where the following applies:
    - (i) webinar Training is offered live online, and a recording of the webinar will be sent to delegates within thirty (30) days following the completion of the webinar;
    - (ii) all webinar delegates need a computer with internet access and a telephone;
    - (iii) all internet costs associated with webinar training are at the Customers expense.

- (iv) webinar training content and materials will be supplied by us to the Customer electronically; and
  - (v) first-time users of webinar technology are encouraged to link in early to allow sufficient time to test system access. Mastergroup shall not be liable for any inability of the Customer to gain access, or the delay to the Customer in gaining access to, the webinar.
- (b) via face to face Workshops, Mastergroup may provide the Customer with training manuals, user guides and training files for the Workshop Training; and/or
- (c) via a one-on-one Training or Consultancy Services, where the following applies:
  - (i) one-on-one Training or Consultancy Services may be provided via remote access, face to face, specialist webinar or workshop training.
  - (ii) training manuals, content, user guides and training files (for one-on-one consultancy, webinar or workshop) will reflect the Training supplied.

6.2 The Customer acknowledges and agrees that:

- (a) the Customer shall be responsible for ensuring that it has an internet capable device and connection to the internet to enable the Customer to take the full benefit of the Training or Consultancy Services being performed; and
- (b) Mastergroup shall not be liable to refund the Customer in the event that the Customer is unable to access the Training or Consultancy Services online for any reason, except where such failure to access the Training and Consultancy Services is the direct result of a technical fault occurring with Mastergroup, or any Unforeseen Event which prevents Mastergroup from conducting the webinar or live online Training or Consultancy Services.

6.3 If Mastergroup in its discretion determines that the Training or Consultancy Services will be conducted in a face-to-face setting at a venue determined by Mastergroup, Mastergroup will use reasonable endeavours to ensure all facilities and equipment available at the venue are:

- (a) safe;
- (b) fit for the purpose for which it is being used; and
- (c) complies with WHS Laws.

6.4 The Customer may request, and Mastergroup in its discretion may agree to provide Training or Consultancy at an alternative venue selected by the Customer ("**Customer Venue**"). If Mastergroup agrees to provide Training or Consultancy for the Customer at the Customer Venue, the Customer warrants that it will:

- (a) notify Mastergroup of any inherent risks, safety hazards and other risks present at the Customer Venue, and all other matters which are required to be notified

and disclosed to Mastergroup, the Trainer or the Consultant under WHS Laws; and

- (b) provide the Trainer or Consultant with a safe environment in which to perform the services;
- (c) maintain for the duration of the Term the following insurances:
  - (i) worker's compensation policy; and
  - (ii) a public liability policy
  - (iii) that includes adequate coverage for Mastergroup's personnel (including the Trainer and the Consultant) who are at the Customer Venue; andwith a reputable insurance provider authorised by the Australian Prudential Regulation Authority, with a financial security rating of A- or better by S&P Global (or the equivalent rating with another recognised rating agency);
- (d) provide a certificate of currency with respect to the insurance policies required under this Agreement to Mastergroup upon request;
- (e) comply with WHS Laws at all times; and
- (f) indemnifies and holds harmless Mastergroup and its personnel from any loss, cost (including legal costs), damage, expense or liability (including liability for personal injury or death) which may be incurred by Mastergroup or its personnel (including the Trainer or the Consultant) by reason of any failure by the Customer to comply with WHS Laws and the provisions of this clause 6.4.

6.5 Where Mastergroup agrees to provide Training or Consultancy services at the Customer Venue, Mastergroup agrees that it will ensure that its personnel who are at the Customer Venue comply with lawful and reasonable directions and policies of the Customer relating to security, health and safety procedures notified to Mastergroup in advance of the Training or Consultancy Services being provided.

6.6 If, in the opinion of Mastergroup, the Trainer or the Consultant, the Customer Venue is:

- (a) not suitable for our purposes or
- (b) is not, in our sole opinion, compliant with WHS Laws,

Mastergroup or its trainer has the right to refuse to conduct Training or Consultancy services at that Customer Venue. Mastergroup's failure to conduct the Training or Consultancy Services at the Customer Venue in circumstances where this clause 6.6 applies does not constitute a breach of this Agreement by Mastergroup.

6.7 If Mastergroup or its Trainer refuses to conduct Training or Consultancy Services at the Customer Venue, Mastergroup may, but is not obliged to, allow the Customer to re-book the Training and Consultancy Services in a venue of Mastergroup's choosing.

## **7. CUSTOMER'S OBLIGATIONS AND RESPONSIBILITIES – CONSULTANCY**

- 7.1 The Customer acknowledges and agrees that:
- (a) the services provided by the Consultant is limited to:
    - (i) advice relating to the use of the Software or Third Party Software, including:
      - (A) identifying and troubleshooting errors in the Customer Data (defined in clause 7.1(b)) using the Software or Third Party Software;
      - (B) identifying best practices when entering, identifying errors or amending Customer Data in their Software or Third Party Software
    - (ii) for the avoidance of doubt, Consultancy Services does not include the provision of any financial advice.
  - (b) the accuracy of the advice provided by the Consultant depends on the accuracy of the information, literature, documentation, statements and other materials that are provided by the Customer to the Consultant ("**Customer Data**").
- 7.2 The Customer shall supply the Consultant at the Customer's own expense any Customer Data (whether in digital, print or other format), and any technical or other information that the Consultant may require in order to perform the Consultancy Services.
- 7.3 The Customer warrants that it owns, or otherwise has all right, title and interest (including any Intellectual Property Rights) in the Customer Data, and that the use of the Customer Data by the Consultant does not infringe upon any rights (including any Intellectual Property Rights) of any third party.

## 8. COPYRIGHT

- 8.1 Unless otherwise stated, Mastergroup has and retains copyright in and ownership of all our documents, text, images, audio or video files (including podcasts), computer code and software, Training materials and the names and logos associated with Mastergroup®, Agrimaster® and Wagemaster® (our **Copyright**).
- 8.2 Unauthorised use of our Copyright may infringe Australian and international intellectual property laws. The Customer must not use or reproduce any part of our Copyright in connection with any other matter or provide any part of our Copyright to a third party without our express prior written consent.

## 9. LIABILITY

- 9.1 Subject to clause 9.3, if the Customer seeks to claim compensation, damages or contribution from Mastergroup for loss or damage arising from any purported acts or defaults (including negligence) on our part and some or all of that loss or damage was due to or contributed to by:

- (a) the Customer's own acts or defaults or by the acts or defaults of other persons for whose actions or defaults the Customer is responsible; or
- (b) the acts or defaults of one or more other persons, not being partners, employees or agents for whose conduct Mastergroup are responsible,

then the Customer agrees that Mastergroup will be liable only for that proportion of the loss or damage which our acts or defaults bear relative to the totality of the conduct of all persons causing or contributing to the loss or damage.

- 9.2 Where any Law relating to proportionate liability applies to a claim against Mastergroup, this clause does not seek to exclude the operation of that law yet will continue to operate to the extent that its operation is consistent with that law.
- 9.3 Notwithstanding any other provision in this Agreement, the Customer agrees that Mastergroup's maximum aggregate liability to the Customer under or in connection with these Terms and Conditions, or the Training or Consultancy Services we provide or agree to provide to the Customer, is limited to an amount equivalent to the fees the Customer has paid us for the Training or Consultancy Services.

## **10. CANCELLATION OF TRAINING SERVICES BY US**

- 10.1 Mastergroup may cancel the provision of Training by notice to the Customer if the Training session is undersubscribed, the Training venue or trainer is unavailable or for any other reasonable reason.
- 10.2 Except where clause 3(b), 3(c), 3(d) or 6.6 applies, if it is necessary for us to cancel, delay, or deny access to, or otherwise refuse to provide Training or Consultancy Services for any other reason, Mastergroup will give the Customer as much notice as possible and will contact the Customer to arrange alternative or substitute Training or Consultancy Services.
- 10.3 If Mastergroup cancels, delays, or denies access to, or refuses to provide the Training or Consultancy Services for any reason except where clause 3(b), 3(c), 3(d) or 6.6 applies:
  - (a) The Customer is entitled, at the Customer's election, to:
    - (i) a refund of the fees the Customer has paid or
    - (ii) a credit for future Training or Consultancy services provided by us to the value of the fees the Customer paid; and
  - (b) Mastergroup assume no responsibility for non-refundable airline-tickets, accommodation, deposits, or any other expenses the Customer incurs.

## **11. TERMINATION BY US**

- 11.1 Mastergroup may terminate the Training or Consultancy Services with the Customer:
  - (a) If the Customer has not paid for the Training or Consultancy Services within the timeframes specified in these Terms and Conditions or on our Website;

- (b) for any other reason outside our control which has the effect of compromising our ability to provide the Customer with the Training or Consultancy Services within the required timeframe;
  - (c) if the Customer breaches this Agreement and does not remedy the breach within ten (10) Business Days after being so notified of the breach; or
  - (d) if the Customer breaches this Agreement and such breach is incapable of being remedied; or
  - (e) Mastergroup cancels, delays, denies access to, or refuses to provide Training or Consultancy Services in circumstances where clause 3(b), 3(c), 3(d) or 6.6 applies; or
  - (f) if the Customer is in breach of clause 3, 5, 6.4, 8.2, 16.3, or 21; or
  - (g) for convenience.
- 11.2 Where clause 11.1(c), 11.1(d), 11.1(e) or 11.1(f) applies, Mastergroup may terminate the Training or Consultancy Services immediately by written notice to the Customer.
- 11.3 Except where clause 11.1(c), 11.1(d), 11.1(e) or 11.1(f) applies, Mastergroup will give the Customer reasonable written notice of termination of our Training or Consultancy Services. The Customer will be liable for all costs incurred up to the date of termination.
- 11.4 If this Agreement is terminated by us in accordance with clause 11.1(b) or 11.1(g), Mastergroup agrees to refund to the Customer the fees paid by the Customer less any amount proportionate to the Training or Consultancy Services already performed by us prior to termination.

## **12. TERMINATION OR CANCELLATION BY THE CUSTOMER**

- 12.1 Subject to clauses 12 and 13, the Customer must only cancel their attendance at any Training session by prior written notice emailed to [support@agrimaster.com.au](mailto:support@agrimaster.com.au) or by telephoning (08) 6380 8800 and speaking a member of Mastergroup's Customer Support and Success Team.
- 12.2 Subject to clause 12.4(a), and 13, the balance of the Customer's Training or Consultancy Services fees will be returned to the Customer, if the Customer cancels more than seven (7) Days before the Training or Consultancy Services is due to commence.
- 12.3 The Customer's Training fees will be 100%-forfeited if the Customer cancel seven (7) Days or less before Training or Consultancy Services is due to commence.
- 12.4 If the Customer cancels any Training or Consultancy Services:
- (a) The Customer agrees that all reasonable Costs incurred by Mastergroup must be paid for in full or from the Training or Consultancy Services fees already paid by the Customer; and



- (b) Mastergroup assumes no responsibility for any expenses incurred by the Customer, including (but not limited to) any non-refundable airline-tickets, accommodation, or deposits.

12.5 The Customer may terminate this Agreement:

- (a) if Mastergroup breaches this Agreement and does not take steps to remedy the breach within ten (10) Business Days after being so notified of the breach; or
- (b) if Mastergroup breaches this Agreement and such breach is incapable of being remedied.

### 13. REFUNDS

- 13.1 Refunds due to Customer's cancellation will be for the Training or Consultancy Services fees less any costs incurred by Mastergroup, including any venue booking costs or catering costs.
- 13.2 If a refund is due under this Agreement, it will be issued within 20 Business Days, and the Customer must provide Mastergroup with their bank or credit card details in order to receive a refund.

### 14. PRIVACY

- 14.1 Mastergroup will collect Personal Information from the Customer in the course of providing our services. Mastergroup may also obtain personal information from third parties.
- 14.2 The Customer's personal information will only be used for the purposes for which it is collected or in accordance with the Privacy Law. For example, Mastergroup may use the Customer's Personal Information to provide advice and recommendations which takes into account the Customer's personal circumstances.
- 14.3 Mastergroup manages and protects the Customer's Personal Information in accordance with our Privacy Policy, a copy of which can be found on our website [www.agrimaster.com.au/utility/terms-conditions](http://www.agrimaster.com.au/utility/terms-conditions)
- 14.4 Our Privacy Policy contains information about how a Customer can access and correct any Personal Information Mastergroup holds about a Customer and how a Customer can raise any concerns about Mastergroup's personal information handling practices. For more information, please contact Mastergroup by emailing: [support@agrimaster.com.au](mailto:support@agrimaster.com.au).

### 15. TRAINING PROGRAM CHANGES

- 15.1 Mastergroup reserves the right to make changes to the advertised Training at its discretion. For example, Mastergroup may change Training dates, content, speakers or method of Training presentation.
- 15.2 If Mastergroup changes the Training dates (for example, because a Training course is undersubscribed), Mastergroup will offer the Customer a place on the next available Training course or on another date Mastergroup mutually agree on.

- 15.3 The Customer may substitute participant trainees to Training courses up to the time of the relevant Training course's commencement.

## **16. ELECTRONICALLY SENDING MATERIAL**

- 16.1 Mastergroup may electronically send and receive documents. However, as such transmission is not guaranteed to be secure, there is a risk such documents may be copied, recorded, read or interfered with by third parties while in transit.
- 16.2 If the Customer asks Mastergroup to electronically transmit any document, the Customer irrevocably releases Mastergroup from any claim the Customer may have as a result of any unauthorised copying, recording, reading, or interference with, that document, or for any delay or non-delivery of any document, and for any damage caused to the Customer's system or any files.
- 16.3 The Customer agrees that it will not, in relation to the sending of electronic material:
- (a) send spam or otherwise duplicative or unsolicited messages;
  - (b) send or store infringing, obscene, threatening, libellous or otherwise unlawful or tortious material, including material harmful to children;
  - (c) transmit, store, insert, or activate any virus, Trojan horse or other malware or computer programming code, including source and object code, which may impair, deny or otherwise adversely affect the Software or any of Mastergroup's information technology systems; or
  - (d) interfere with or disrupt the integrity, security or performance of the Software or of Mastergroup's information technology systems.

## **17. GST**

Where applicable, GST is payable on our professional fees and expenses and will be clearly shown on our tax invoices. By accepting these terms, the Customer agrees to pay Mastergroup an amount equivalent to the GST imposed on these charges.

## **18. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

- 18.1 All Intellectual Property Rights in all materials (whether in hard copy or electronic form) which Mastergroup creates or supplies to the Customer in the course of performing the Training or Consultancy Services under this Agreement will, as between the Parties, be owned by Mastergroup.
- 18.2 The Customer acknowledges the confidential nature of, and the technology and proprietary design of Mastergroup's Training and Consultancy Services; including, but not limited to, documentation, materials, videos, audio files, blogs, vlogs, podcasts, white papers, processes, procedures, forms, trade marks, instructions, operating manuals and other information.
- 18.3 Except the limited conditional purposes of this Agreement, the Customer shall not, without Mastergroup's prior consent in writing, copy or cause to be reverse-engineered, modify, copy or disclose any details of documentation, materials, videos, audio files,

blogs, vlogs, podcasts, white papers, processes, procedures, forms, trade marks, instructions, operating manuals and other information technology, design, procedure, items or any Confidential Information.

- 18.4 The Customer may only disclose such details to those of its employees, contractors or agents by whom it is required to facilitate the Training or Consultancy Services to be used in a manner reasonably contemplated by Mastergroup.
- 18.5 The Customer acknowledges that any improvements, enhancements, modifications discoveries, inventions, patents, designs or other rights arising directly or indirectly out of or in the performance of this Agreement are the property of Mastergroup.
- 18.6 The Customer's obligations under this clause 18 shall survive the termination of this Agreement.
- 18.7 The Customer is responsible for the security of its proprietary and other classified information. The Customer undertakes to indemnify Mastergroup and holds Mastergroup and its personnel harmless against all claims brought by any party for loss or damage to such information howsoever caused.
- 18.8 Other than as specifically provided for in this Agreement, nothing in this Agreement assigns, transfers or grants a licence to a party over or in relation to pre-existing Intellectual Property Rights owned by the other party, Mastergroup's supplier or a third party.
- 18.9 Each party agrees not to, and shall ensure that its employees, agents and advisors do not, disclose to third parties, any Confidential Information or proprietary information arising or disclosed pursuant to this Agreement (including information not generally known to the public, such as without limitation technical, development, marketing, sales, operating, performance, cost, know-how, business and process information or computer programming techniques), except:
  - (a) with the prior written permission of the party to whom such information belongs;
  - (b) as required by applicable law or regulation or pursuant to a court order or direction of any government authority or regulatory body or stock exchange; or
  - (c) where the information is already known to, or obtained by independent means, or independently developed, by the recipient, or is already in the public domain through no fault of the recipient.

## **19. LIMITATION OF LIABILITY**

### **19.1 Customer Acknowledgements**

- (a) The Customer acknowledges and agrees that:
  - (i) Mastergroup is not responsible for the conduct or activities of any other user of the Training;

- (ii) Mastergroup is not an accounting or legal firm, nor a prescribed tax agent, registered tax agent or BAS agent under the *Tax Agent Services Act 2009* (Cth) or an Australian Financial Services licensee, and does not provide advice or services in taxation, finance, or BAS, and any Training or Consultancy Services does not constitute the provision of accounting, financial, tax or legal advice;
  - (iii) they are solely responsible for complying with all applicable accounting, tax and other laws; and
  - (iv) they are entering into, and acquiring goods and/or services under, this Agreement for commercial purposes and not for domestic, personal or household use.
- (b) If the Customer is a consumer within the meaning of the Consumer Law, there are certain rights (such as the consumer guarantees implied by the Consumer Law, which cannot by law be excluded (**Non-Excludable Conditions**)). This clause is subject to those Non-Excludable Conditions.
- (c) Subject to the application of any applicable Non-Excludable Conditions and to the maximum extent permitted by law, Mastergroup:
  - (i) excludes from this Agreement all guarantees, conditions and warranties that might but for this clause be implied into this Agreement;
  - (ii) excludes all liability to the Customer for any Costs, expenses, losses and damages suffered or incurred directly or indirectly by the Customer in connection with this Agreement, including using the Services, whether that liability arises in contract, tort or under statute; and
  - (iii) will not, under any circumstances, be liable to the Customer for any Consequential Loss.
- (d) If Mastergroup's liability under this Agreement cannot be lawfully excluded, to the maximum extent permitted by law, Mastergroup's liability for breach of any Non-Excludable Condition is limited:
  - (i) in the case of goods, to (at Mastergroup's option) the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and
  - (ii) in the case of services, to (at Mastergroup's option) the supplying of the services again; or the payment of the cost of having the services supplied again.

## 19.2 Costs

Mastergroup excludes all other liability to the Customer for any Costs, including Consequential Loss, suffered or incurred directly or indirectly by the Customer in connection with the Agreement, or the Services, in connection with:

- (a) reliance on technical advice, modelling or calculations provided by Mastergroup;
- (b) the infringement or claimed infringement by any person other than Mastergroup or its representatives (including its Trainers or Consultants) of the Intellectual Property Rights including moral rights of any person in connection with the Agreement;
- (c) any unauthorised activity in relation to the Training or Consultancy Services by the Customer;
- (d) the Customer's use of or reliance on the Training or Consultancy Services for a purpose other than the business purposes of the Customer or the reasonably expected purpose of the Training or Consultancy Services; or
- (e) the Customer's failure to fulfil its obligations under the Agreement. The foregoing limitation applies however the Costs are caused whether they arise in contract, tort (including by Mastergroup's negligence), or under statute.

### **19.3 Neither party liable for Consequential Loss**

Notwithstanding any other provision of this Agreement, neither party shall be liable to the other under this Agreement for any Consequential Loss arising out of a breach by it of this Agreement.

## **20. WARRANTY**

### **20.1 Exclusion of express warranties**

Subject to the obligations of Mastergroup in respect of the provision of the Training or Consultancy Services under this Agreement, Mastergroup makes no warranties or guarantees:

- (a) the Training or Consultancy Services will be accessible at all times, uninterrupted or error free;
- (b) that any of the material used in, or technology used for the conduct of Training or Consultancy Services will be without bugs or viruses; and
- (c) that any of the information provided during Training or Consultancy Services is without error or inaccuracy;

### **20.2 Warranties as to capacity**

Each party (including the Customer in its own capacity and on behalf of the Customer) represents and warrants to the other that:

- (a) it has full power and authority to execute an agreement and observe and perform all of its obligations;
- (b) it is not aware of any thing, matter or circumstance which may prevent it from fulfilling its obligations under this Agreement; and

- (c) it is not insolvent and no receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed in relation to all or any of its affairs or material assets.

## **21. RESPECTFUL CONDUCT POLICY**

- 21.1 Mastergroup is committed to maintaining a safe work environment free of all forms of violence, including verbal and physical threats. Mastergroup has a zero-tolerance policy with respect to all forms of violence in the workplace. Mastergroup believes that a safe and secure work environment free from violence is fundamental to all Customers, employees, contractors, guests, or members of the public.
- 21.2 Mastergroup will not tolerate or condone any forms of threats or violence committed by or against its employees, contractors, customers (including the Customer), suppliers, or visitors on its premises or otherwise communicated (including in written form, via audio-visual facilities, SMS or telephone, or via other forms of electronic media such as email or social media), nor does Mastergroup tolerate or condone any forms of threats or violence by or against its employees while engaged in business on its behalf.
- 21.3 The Customer acknowledges that the following list of behaviours, while not inclusive, provides examples of conduct which is prohibited at all times in connection with any Training or Consultancy under this Agreement:
  - (a) threatening, intimidating, bullying, or physically/verbally abusing another person;
  - (b) aggressive or hostile behaviour that creates a reasonable fear of injury to another person;
  - (c) causing physical injury to another person;
  - (d) possession of a weapon while on Mastergroup property or while on Mastergroup business;
  - (e) fighting, hitting, biting, kicking, pushing, shoving or spitting at another person;
  - (f) intentionally damaging Mastergroup property, property of its employees or property of its customers;
  - (g) committing acts motivated by, or related to, domestic violence on Mastergroup premises;
  - (h) bothering someone by following or with an excessive number of unwelcome visits, calls, SMS messages, emails, social media posts or messages, letters, or gifts;
  - (i) lewd behaviour or obscene phone calls, SMS messages, emails, letters, gifts, or graffiti; or
  - (j) offensive language, rudeness or derogatory remarks.

- 21.4 Where Mastergroup employees or personnel are on a call and exposed to a breach of this policy, or where they feel their rights under this policy are in breach, they are asked to:
- (a) transfer the call or dealings with the other party to a supervisor or manager; or
  - (b) discontinue the call or dealings and report the event to a supervisor to follow up on.
- 21.5 Anyone who has experienced, witnessed or has knowledge of any prohibited conduct under this policy must report the incident at once to [support@agrimaster.com.au](mailto:support@agrimaster.com.au) or to Mastergroup's Sales and Success General Manager where the matter will be documented and investigated.

## **22. DISPUTE RESOLUTION**

- 22.1 Subject to clause 22.6, any dispute which arises between the parties in connection with this Agreement (dispute) must be dealt with in accordance with the requirements of this clause 22, before either party will be entitled to commence proceedings against the other party in respect of the dispute.
- 22.2 The party claiming that a dispute has arisen (complainant) must give the other party a written notice setting out:
- (a) a detailed explanation of the nature of the dispute; and
  - (b) what action the complainant thinks will resolve the dispute (dispute notice).
- 22.3 Within ten (10) Business Days of the dispute notice being received by the other party, a nominated senior executive of each party must meet, act in good faith and use best endeavours to resolve the dispute at that meeting, or such subsequent meetings as may be reasonably required.
- 22.4 If the dispute is not resolved pursuant to clause 22.3 within thirty (30) days of the dispute notice being received by the other party, the parties agree to attend a privately held mediation with a mediator appointed by the nominated senior executive of both parties, and in the absence of agreement within ten (10) Business Days of disagreement by such mediator as appointed by the President, or person in like office of the Australian Disputes Centre.
- 22.5 If the dispute is not resolved within a further thirty (30) days pursuant to clause 22.4 then either party may commence proceedings against the other party in respect of the dispute.
- 22.6 Nothing in this clause 22 prevents a party from seeking urgent injunctive or similar relief from a court.

## **23. GENERAL**

### **23.1 Notices**



- (a) Each party must notify the other party of their contact information, including email, postal address and phone numbers, and keep each other Party informed by notice in writing of any changes thereto.
- (b) Any communication under or in connection with this Agreement:
  - (i) must be to the addressee from time to time;
  - (ii) must be in writing;
  - (iii) must be delivered or posted by prepaid post to the address, or sent by email to the addressee, in accordance with clause 23.1(b)(iv) ; and
  - (iv) If a notice is sent or delivered in the manner provided in 23.1(b)(iii) it must be treated as given to or received by the addressee in the case of:
    - (A) delivery in person, when delivered;
    - (B) delivery by post, on the third (3<sup>rd</sup>) Business Day after posting;
    - (C) delivery by email, at the earlier of the time stated in a read receipt sent by the recipient's computer or when the message has been delivered to the email address of the addressee, but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

### **23.2 Unforeseen Event**

A party is not responsible for any loss arising out of any occurrences or condition beyond its control, including acts of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility, internet infrastructure or common carrier or computer disruption due to the effects of a computer virus, trojan, worm, malware or other malicious code.

### **23.3 Sub-contractors**

- (a) The Customer acknowledges and agrees that Mastergroup may subcontract any of its obligations of this Agreement to a third party (or multiple third parties) without notification to or consent from the Customer.
- (b) The use of a subcontractor will not release Mastergroup from any of its obligations pursuant to this Agreement.

### **23.4 Assignment**

- (a) The Customer may only assign, novate or otherwise create an interest in its rights under this document with the prior written consent of Mastergroup, which may be withheld in Mastergroup's absolute discretion.
- (b) If a change in Control occurs with respect to the Customer, the Customer will be deemed to have assigned its rights under this Agreement. The Customer must, prior to a change in Control occurring, obtain the consent of



Mastergroup to assign or novate its rights under this Agreement, which consent shall not be unreasonably withheld.

- (c) Mastergroup may assign, novate, encumber, declare a trust over or otherwise create an interest in its rights under this Agreement without the consent of the Customer, and may disclose to any potential holder of the right or interest any information relating to this Agreement or any party to it.

### **23.5 Amendment**

- (a) The Customer acknowledges and agrees that Mastergroup may amend or vary this Agreement at any time by either posting the changes on its Website or by electronic notification to the Customer, at Mastergroup's sole election.
- (b) The Customer is responsible for regularly reviewing the website to obtain timely notice of such amendments or variations.
- (c) The Customer's continued use of the Training or Consultancy Services after notified amendments or variations are made by Mastergroup to these Terms and Conditions constitutes the Customer's acceptance of this Agreement being as modified by those amendments or variations.

### **23.6 Liability for expenses**

Each party must pay its own expenses incurred in negotiating, executing, stamping (if any) and registering this Agreement.

### **23.7 Giving effect to this Agreement**

Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.

### **23.8 Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

### **23.9 Relationship**

Nothing in this Agreement is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties. Unless expressly stated in this Agreement, no party may act as agent of or in any way bind another party to any obligation.

### **23.10 Operation of this Agreement**

- (a) This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect. Any condition, warranty, representation or other term concerning the supply of the Training or Consultancy services and Documentation which might otherwise be implied into, or incorporated in, the Agreement, whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

#### **23.11 Inconsistency with other documents**

If this Agreement is inconsistent with any other document or agreement between the parties, the following order of priority shall apply:

- (a) any written agreement between the parties where the parties agree that any of the provisions in these Terms and Conditions should be superseded with an express reference to this clause 23.11;
- (b) the SaaS/EULA; and
- (c) this Agreement and its Schedules.

#### **23.12 Reliance**

Neither party has entered into any contract under this Agreement in reliance on or as a result of any representation, promise, statement, conduct or inducement by the other otherwise than as set out in this Agreement.

#### **23.13 Counterparts**

This Agreement may be agreed to in any number of counterparts including where they are exchanged by email or agreed electronic or digital means containing this Agreement as an unalterable attachment. All counterparts together will be taken to constitute one instrument.

#### **23.14 Consents**

Where this Agreement states that the consent or approval of Mastergroup is required, Mastergroup may:

- (a) give or withhold that consent or approval in its absolute discretion; and
- (b) give that consent or approval subject to conditions, unless this Agreement expressly states otherwise.

#### **23.15 Liability of Parties**

If a party consists of more than one person:

- (a) an obligation of that party is a joint obligation of all of those persons and a several obligation of each of them; a right given to that party is a right given jointly and severally to each of those persons, and if exercised by one of them, is deemed to be exercised jointly; and
- (b) a representation, warranty or undertaking made by that party is made by each of those persons.

### 23.16 Governing law

The laws of Western Australia, Australia govern this Agreement. The parties submit to the exclusive jurisdiction of courts exercising jurisdiction there.

## 24. DEFINITIONS AND INTERPRETATION

24.1 Unless the context otherwise requires, the following terms and expressions used in these Terms and Conditions have the following meanings:

**Agreement** means this these Terms and Conditions including any annexures or schedules and any as Training booking information or details and Customer specifications specified through the Website.

**Business Days** means any day which is not a Saturday, Sunday or a gazetted public holiday in Perth, Western Australia;

**Confidential Information** means information that is by its nature confidential, including information relating to the:

- (a) personnel, policies, practices, customer or business strategies of the parties;
- (b) Intellectual Property Rights of either party;
- (c) the terms of this Agreement;

but does not include information:

- (d) already rightfully known to the receiving party at the time of disclosure by the other party; or
- (e) in the public domain (including information made publicly available via a mechanism in the Software by the Customer) other than as a result of disclosure by a party in breach of its obligations of confidentiality under the Agreement.

**Consequential Loss** means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss, loss of goodwill, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

**Consultant** means the Mastergroup representative(s) providing Consultancy Services to the Customer under this Agreement;

**Consultancy Services** means the services that Mastergroup provides to its Customers under this Training and Consultancy Terms and Conditions, as detailed in clause 7.1.

**Consumer Law** means the *Competition and Consumer Act 2010* (Cth) as applied to Australia's States and Territories under the following legislative provisions: *Fair Trading (Australian Consumer Law) Act 1992* (ACT); *Fair Trading Act 1987* (NSW); *Consumer Affairs and Fair Trading Act 1990* (NT); *Fair Trading Act 1989* (Qld); *Fair Trading Act 1987* (SA); *Australian Consumer Law (Tasmania) Act 2010*; *Australian Consumer Law and Fair Trading Act 2012* (Vic); and *Fair Trading Act 2010* (WA).

**Cost** means any costs, expenses, losses, damages, claims, demands, proceedings, and other liability.

**Customer Data** has the meaning given in clause 7.1(b).

**Documentation** means the instructional guide, documentation or manual published by Mastergroup from time to time which provides information and instructions in relation to the Mastergroup Software

**GST** has the meaning given in the GST Act.

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

**Intellectual Property Right** means all present and future rights conferred by statute, common law or equity in or in relation to business names, circuit layouts, computer software, confidential information, copyright, designs, domain names, formulas, inventions, knowhow, patents, recipes, trademarks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

**Law** means any applicable statute, regulation, by-law, ordinance, policy, or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

**Personal Information** has the meaning given to that term in the *Privacy Law*.

**Privacy Law** means:

- (a) the *Privacy Act 1988* (Cth); and
- (b) any code registered under the *Privacy Act 1988* (Cth) or *Australian Privacy Principles*.

**Privacy Policy** means Mastergroup's privacy policy which is available on Mastergroup's Website or as amended by Mastergroup from time to time.

**SaaS/EULA** means Mastergroup's related Software-as-a-Service and User License Agreement for its Software.

**Software** means the Agrimaster® Agricultural Farm Financial Management Software system, Wagemaster® payroll systems and related services' platform (including any cloud-based Version) for Mastergroup customers (and includes all material (including tangible and intangible information), software (in source and object code forms), web applications, images, files, manuals, documents, devices, data, databases, supplied, created, written, developed or otherwise brought into existence (whether before, on or after the date of this Agreement) by Mastergroup or on its behalf, and all their subsequent versions, updates and enhancements, and may include the application created by Mastergroup utilising the Software for use by the Customer on Apple Inc's iOS or Google Inc's Android-compatible mobile device web browser applications.

**Tax invoice** has the meaning given in the GST Act.

**Terms and Conditions** means these terms and conditions.

**Third Party Software** means software owned by third parties (other than Mastergroup) which may be used by the Customer and in relation to which Mastergroup may agree to provide Consultancy Services in accordance with this Agreement.

**Trainer** means the Mastergroup representative providing Training under this Agreement;

**Training** means the training courses provided by us to the Customer.

**Unforeseen Event** has the meaning given in clause 23.2.

**Websites** mean our website located at: [www.agrimaster.com.au](http://www.agrimaster.com.au)

**WHS Law** means the *Work Health and Safety Act 2020 (WA)*, the *Work Health and Safety (General) Regulations 2022 (WA)*, and any other relevant legislation relating to the safety of personnel in the workplace.

24.2 In this Agreement, the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it,

and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;

- (f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (g) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) references to payments to any party to this Agreement include payments to another person upon the direction of such party;
- (j) all payments to be made under this Agreement will be made by unendorsed bank cheque or other immediately available funds;
- (k) the words “includes” or “including”, in any form, is not a word of limitation
- (l) When the date or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day; and
- (m) In the interpretation of this Agreement, no rule of contract interpretation applies to the disadvantage of a party on the basis that it put forward this Agreement or any part of it.