



Terms and Conditions

1. *When, where and for how long must the Provider offerings be provided by Provider and acquired by Client?*

These terms and conditions or part of a contract between Provider and Client. The other part of this contract is comprised of some details. These details are all as set out in the contract details (**Booking Form**) to which these Terms and Conditions are an attachment or which operate these Terms and Conditions by reference or which refer to these Terms and Conditions. **Provider offerings** refer to goods and services Provider supplies or agrees to supply. The relationship between the parties concerning the Provider offerings is only one of independent contractor and Client, not one of employment or agency, partnership or otherwise. Client acknowledges that the Booking Form was made available by Provider to the Client and that Client is fully aware and understands the extent and implications of the document when read with these Terms and Conditions.

2. *Can this contract be changed, transferred or cancelled?*

2.1 Under the following subclauses, Client risks changes to or cancellations of Provider offerings and any third-party components without receiving a full, or any, refund and without any right to compensation for loss. If Client declines to participate in relevant Provider activities for any reason after they have commenced, Provider is not obliged to make any refunds.

2.2 Client changes and transfers: Provider does not permit Client to make changes or to transfer its commitments after this contract has been entered into. Provider may agree to allow changes or transfers in its absolute discretion but may request certain Client commitments as a condition of doing so, for example payment of reasonable additional costs incurred as a result.

2.3 Client cancellations: Client may cancel this contract due to illness or other reasons beyond Client's reasonable control, in either case as demonstrated to Provider at Provider's satisfaction, with reasonable supporting materials. If any Client cancellation (for whatever reason) occurs earlier than 24 hours prior to the start date (or such longer period as Provider specifies on the Booking Form), Provider may retain the cancellation fee and refund the remaining part of the price paid within the next 10 working days to the account from which payment was made or as otherwise agreed with Client. The cancellation fee is the greater of the amount of deposit paid or payable by Client and \$50.00 + GST (for non-group Provider sessions) and \$20.00 + GST (for group sessions). Client agrees to pay any invoice rendered by Provider for such cancellation fee and that Provider may directly debit the relevant cancellation fee against any payment facility previously advised by Client (including credit card).

If the cancellation occurs after 24 hours prior to the start date (or such longer period as Provider specifies on the Booking Form), Client cancellation will result in all Client payments being forfeited.

The date of cancellation is that on which Provider receives written notice of cancellation from Client and any supporting materials reasonably requested by Provider.

Provider changes and cancellations: in no circumstances shall Provider be liable for **force majeure** circumstances, which include those involving disease of any kind, any measures to control any such diseases; act of God, interference with work, mandatory governmental or official restraint, unavailability or delay in availability of any goods or services or of any governmental or public permissions of any kind, and any circumstance (whether of kind previously mentioned) outside the reasonable control of Provider. Occasions may arise where Provider considers it appropriate to make changes (for example to schedules and facilities) or to cancel this contract (including any booking). Provider may do this. If Provider makes a major change or cancels, Provider will inform Client as soon as reasonably possible. If Provider cancels or makes a major change for its own personal reasons (and not because of, for example, Client's fault or force majeure), Provider shall repay the monies received from Client by Provider for Provider's own (versus third party suppliers') services, less amounts of benefits already received by Client as of the date of cancellation. Provider's shall calculate the value of these benefits on a pro-rata basis reasonably determined by Provider to be appropriate in the circumstances.

2.4 Cancellation by either party: a party may cancel this contract where there has been major breach of the other party's obligations. Examples are Client's non-payment or failure to observe Client's responsibilities and Provider's non-provision of a major portion of the Provider offerings (other than force majeure circumstances). To cancel this contract for a major breach, one-week's written notice of the proposed cancellation needs to be given and the party in default must not have taken remedial action in respect of that breach which is reasonable in all of the circumstances;

2.5 Cancellation by either party: either party may cancel this contract in the exercise of rights given by applicable law which cannot be excluded or limited by this contract.

3. *Are there Client obligations to Provider in addition to payment?*

Yes. In addition to those under other provisions of this contract, these are:

(a) to observe Provider's codes, policies, procedures and practices notified to Client prior to this contract or, where reasonable, following this contract becoming legally binding on the parties. Provider's code of conduct, for example, is available at <https://www.artandhealing.com.au>.



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- (b) warranting to Provider that Client will act reasonably to have regard to the safety of Client and to those for whom Client is responsible (including, if applicable, children for whom Client is a carer);
- (c) warranting to Provider that Client is in good physical and mental condition to participate in the activities forming part of Provider offerings and any third party components and that, unless informed in writing by Client, there are no particular health or medical conditions that Provider should be aware of as regards Client and those for whom Client is responsible. Without limiting this warranty, Client shall, prior to the commencement of delivery of any of the Provider offerings, bring to the attention of Provider, in writing, any pre-existing conditions (including medical) which Provider and its officers, contractors and employees (including instructors) should reasonably be made aware of, the management plan proposed by Client for the condition and any implications for Client's suitability to acquire the Provider offerings. Provider will have the right to immediately cancel this contract if the Client provides in any manner whatsoever false or inaccurate information;
- (d) to furnish Client's own facilities notified to Client by Provider. Provider shall endeavour to do this at or around the time of entering this contract and in any event within a reasonable time in advance of them being required or sought;
- (e) to treat all information which Client learns about Provider as Provider's confidential information other than information which is at the time of Client learning it, or which has since become, public knowledge other than because of Client's wrongdoing; and
- (f) to abide by the decision of Provider's designated leader on all matters likely to affect the safety or well-being of anyone participating in Provider activities or third-party components acquired in connection with such activities. If Client does not comply with such decisions, or does anything which Provider considers might adversely affect other participants, Client agrees to abide by the leader's direction to cease being involved in any or all such activities and components, with no right of refund and without responsibility or liability to Provider or any third party supplier.

4. *What payment arrangements apply?*

Amounts and times for payment by Client are described in the Booking Form. In addition, Client will pay Provider an amount equal to any GST for any supply by Provider under this contract.

5. *What happens if a welfare issue arises?*

Client authorises Provider to take all steps which Provider considers reasonably necessary to protect the welfare of Client and any other person Provider reasonably considers Client has responsibility for. Such steps include those in circumstances involving actual or potential personal injury and may include the administration of emergency medical treatment and ambulance transportation. Client agrees to pay all costs reasonably incurred by Provider in taking such steps.

6. *What is the position of children?*

Children are not permitted to make use of the Provider offerings or otherwise use any Provider facilities, unless approved in writing by Provider and also supervised by a responsible adult. Where Client is such a person in respect of the child, Client that Client will have and will exercise sole responsibility for making decisions for the child at all times. Client acknowledges that some services may involve children not being under the direct supervision of Client and not to allow that to occur unless Client accepts all foreseeable risks of allowing that to occur. Client agrees to indemnify Provider against all consequences (including damages and whether direct, indirect or otherwise) of acts or omissions relevant to Provider's supervision of children for whom Client is responsible and for the consequences of Client's decisions in that regard.

7. *What law and legal system apply to this contract?*

This contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws in force in the State of Victoria, Australia. Provider and Client irrevocably agree that the courts of the State of Victoria shall have sole and exclusive jurisdiction to deal with any dispute or claim that arises out of or in connection with this contract (including non-contractual claims).

8. *Can this contract be read down?*

Yes, if any provision of this contract is a determined by a court to be invalid or unenforceable it shall be read down or severed to the minimum extent reasonably possible to give this contract legal enforceability and in any event all other provisions of this contract shall remain of legal force and effect.

9. *What are Providers' privacy and confidentiality commitments?*

Privacy: It is not Provider's practice to require any Provider clients to answer any question, to participate in any activity, or to tell Provider anything. If Client feels uncomfortable in being asked to respond to any questions or being asked to participate in an activity, Client has the right to refuse. Client understands that by declining to provide Client's requested personal information the benefit of some or all of Provider's goods or services may not be available to Client. Client acknowledges and agrees to



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Provider's privacy policy available at <https://www.artandhealing.com.au/>. Subject to the foregoing, Client agrees to provide any details reasonably requested by Provider, including details regarding date of birth and medical certificates. For privacy law purposes, Provider will process Client's personal information according to Provider's privacy policy (which includes information for Client and about marketing purposes, noting that Client has the option to reject processing for marketing purposes). Client agrees that it will not apply any form of inducement or pressure to other Provider clients to provide their personal information. Provider agrees to take security measures, regarding Provider's holding of Client's personal information, which is sensitive, which are in addition to those adopted by Provider for its day-to-day business documents. Provider agrees to give full consideration to any request by Client for specific security measures in respect of Client's sensitive personal information. Client agrees that because of the nature of the personal information likely to be collected by Provider and the potential need to access it should issues concerning Client's health or well-being arise in the future, Provider may store Client's personal information for a period of 7 years after it was collected by Provider.

Promotions: Only to the extent it is reasonable for Provider to infer that it has consent, Client acknowledges and agrees that Provider and those with whom Provider may have third-party arrangements, and without payment of any fee or obtaining any further consents, may use and disclose information about or depicting Client and those for whom Client is responsible (e.g. Client's image and/or voice) to promote Provider's offerings using such media (including electronic media such as email, SMS and social media platforms) and in such ways as is reasonable in the circumstances. If, in that connection, any images (including photographs) of Client or those for whom client is responsible are taken by or on behalf of Provider, Client acknowledges and agrees that writing such images belong to Provider, alone.

Confidentiality: Provider acknowledges that certain information provided by Client to Provider may be Client's confidential information. Where that is the case, Provider will not use or disclose it except for the purpose of providing agreed goods and services to Client or otherwise with Client's written consent. There are some exceptions to these obligations against uses and disclosures, however. These include:

- where uses and disclosures are considered by Provider as appropriate having regard to any serious concern that Client may endanger Client itself or others;
- if there is a suspicion or disclosure of child abuse;
- where Provider has reasonably inferred that Client consents to Provider disclosing Client's confidential information to Client's health professionals or third parties (for example during group therapy sessions). Client agrees that Provider is not liable for uses and disclosures which other participants in Provider's services may make of Client's information disclosed to them by Client, for example during group sessions. Client agrees, for its part, not to use or disclose any information learned by about Provider's other clients; and
- to the extent any relevant information has become public knowledge.

DISCLAIMER OF LIABILITY

10. *What is this disclaimer of Liability about?*

This Disclaimer of Liability is about RISKS and WARNINGS. The provisions of this Disclaimer of Liability are to make it clear that Client's agreement to acquire Provider offerings and any related third party components involves Client accepting some foreseeable risks which, if they eventuate, may cause significant harm to Client and to any others for whom Client may be responsible in connection with Provider offerings.

IMPORTANT WARNING

The physical and mental safety of those who acquire Provider offerings (goods and services) are matters of extreme importance. Client must realise that Client is responsible to make its own self-aware of risks for the physical and mental safety of Client and those for whom Client is responsible and to accept sole responsibility for all decisions to participate or allow participation. Client accepts full responsibility for Client's own choices in that regard.

Provider is **not** a medically trained professional and makes **no** claims or representations to treat, cure or diagnose any circumstance including any mental or physical condition and anything which may be regarded as a medical issue. Provider aims only to share Provider's own knowledge and experiences.

Client is warned not to interpret or act on Provider's services in any way instead of or to alter anything recommended by Client's medical practitioner or other health professional. Client should always act on the advice of their own by medical professional or other health professional as a matter of priority over any goods or services supplied by or on behalf of Provider.



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In the following clauses "Australian Consumer Law" means the Australian Consumer Law in Schedule 2 of the *Australian Competition and Consumer Act 2010* (Cth).

11. *How is Provider's liability disclaimed?*

Subject to clause 12 below, if Provider becomes liable to Client for or in any way relating to any Provider offerings, Provider's liability shall be limited to (i) supplying them again; or (ii) the payment of the cost of having them supplied again; and this provision applies regardless of (iii) the nature of the act or omission which gave rise to the liability; (iv) the cause of action which gave rise to the liability, whether a breach of contract, negligence, failure to comply with a guarantee under Subdivision B of Division 1 of Part 3.2 of the Australian Consumer Law or otherwise; (iii) the nature of the harm, whether death, personal injury, property damage or otherwise; and (iv) the characterisation of the liability, whether "consequential", "direct", "indirect", "special", "loss of profits", "loss of anticipated profits", loss of use of capital or revenue", "punitive", "exemplary" or loss of enjoyment, and whether for disappointment, inconvenience or discomfort, or otherwise.

12. To the extent Provider's liability referred to in clause 11 above is for failure to comply with a guarantee given by Subdivision B of Division 1 of Part 3.2 of the Australian Consumer Law, then the limitation in that clause: (a) does not apply to the extent Provider's supply is of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; and (b) in any event, does not apply if Client establishes that it is not fair or reasonable for Provider to rely on that term. In determining whether such reliance is fair all reasonable, Provider and Client acknowledge that shall have regard to the matters set out in section 64A of the Australian Consumer Law.

13. All terms (including all Provider obligations) which are not expressly stated in this contract are excluded, whether those terms are conditions or warranties, express or implied, oral, in writing or otherwise. For example, there is no express or implied term that Provider will supply the Provider offerings with care or skill, will ensure that they are fit for any purpose or that they might achieve any results which Client have made known to Provider and Provider owes no fiduciary obligations to Client or those for whom Client is responsible. Such a reference to a contract relating to Provider offerings does not include a reference to any guarantee under Subdivision B of Division 1 of Part 3 2 of the Australian Consumer Law.

Client agrees that in respect of an act or omission of any third-party supplier relevant to Provider offerings, Client's sole recourse, if any, is against the third-party supplier, not against Provider. It is strongly recommended that Client obtain independent legal advice regarding the limitations of liability under this contract and under any terms of any third party supplies, considering that Provider does not grant any warranties, express or implied, relating to the operation, safety, condition, or service of any third party suppliers. For example (and without limitation), Client's recourse for death, personal injury or property damage caused by a third-party supplier may be limited in accordance with the provisions under contracts and other arrangements for third party components. Except to the extent Provider is liable to Client or those for whom Client is responsible, having regard to the limitations and exclusions of liability set out in the previous clauses, Client shall indemnify Provider against the consequences of all claims against Provider referable to the goods and services of third party suppliers to Client or to those for whom Client is responsible, whether those consequences be liability for the payment of money or relate to death, personal injury, property damage or otherwise and regardless of their legal bases.