MXM INSTITUTE

Terms and Conditions

Goods and Services · Queensland, Australia

1. Agreement

1.1 These Terms apply on and from the date on which you request Jamie Christopher Holmes trading as MXM Institute ABN 12 335 492 477 ("**us**", "**we**", "**our**") to provide Goods or Services to you, including by accepting a Quote.

1.2 This Agreement is the only agreement which applies to the Goods and Services supplied to you, and supersedes all prior discussions.

2. Provision of Goods and Services

2.1 We will provide you with the Goods and Services, subject to your compliance with these Terms.

2.2 We will perform the Services with reasonable skill, care and diligence consistent with Australian professional standards.

2.3 Timeframes are indicative and may be adjusted for access constraints, your delays or Force Majeure Events.

3. Quotes

3.1 Quotes are valid for thirty (30) days.

3.2 We may amend a Quote or provide an additional Quote if:

(a) you wish to increase the scope of works referred to in the Quote; or

(b) information comes to our attention after a Quote has been issued that affects the scope of the Goods and Services to be provided.

3.3 You may accept a Quote in writing or by proceeding to engage us after the provision of a Quote.

3.4 Once you accept a Quote, you are deemed to have ordered the Goods and Services the subject of the Quote. You may not cancel or revoke an acceptance of a Quote.

4. Fees and Expenses

4.1 In consideration for our provision of the Goods and/or Services, you must pay us the fee set out in the Quote (or any other fee agreed to by the parties in writing) within 7 days of the issue of a tax invoice unless otherwise agreed by the parties in writing.

4.2 To the extent that you request that we provide you with Goods or Services which are not covered by a Quote and we agree to provide such Goods and Services, you must pay us the agreed fee for those Goods or Services (or if no fee has been agreed, our standard rate for such Goods or Services) within 7 days of the issue of a tax invoice.

4.3 You must reimburse us for all out-of-pocket expenses reasonably incurred by us in the proper performance of the Services, subject to the provision of a tax invoice, and provided that you have approved them in advance. If you refuse to provide such approval, we may terminate this Agreement on giving 7 days' written notice to you.

4.4 In the event that you cancel or postpone an appointment with us that was made for the purpose of us providing the Services to you, or if this Agreement is terminated, on less than 72 hours' notice , we may charge you a cancellation fee in a sum equivalent to the number of hours we would have spent at that appointment, based on our standard hourly rates, as determined by us (acting reasonably), and you must pay such fee upon provision of a tax invoice.

4.5 You must pay to us interest on any overdue amount under this Agreement at a rate of 8% per annum, such interest to accrue on a daily basis.

4.6 All pricing does not include GST unless expressly stated. GST will be charged at the rate current at the time the Goods and Services are supplied, and is payable at the time that payment for those Goods and Services fall due.

4.7 You acknowledge and agree that we may apply any deposit that you pay us, or any part thereof, towards satisfaction of your payment obligations under this Agreement.

5. Your responsibilities and acknowledgements

5.1 You must:

(a) ensure the Site will at all times be a safe working environment for us, our officers, employees, contractors, agents and authorised representatives and (without limitation) does not contain asbestos or similar hazards or any infections or building diseases. You must notify us in advance of any unsafe condition at the Site prior to us attending the Site. We reserve the right to refuse to perform any Services at the Site if in our reasonable opinion the Site is not a safe working environment, until such time as it has been made safe at your cost;

(b) provide us with all information, specifications and documents necessary for us to provide the Goods and Services to you;

(c) ensure that your instructions and all information you have supplied to us are at all times current and accurate;

(d) provide us access to the Site, systems and personnel during reasonable working hours for purposes of us performing the Services; and

(e) comply with our procedures in relation to our provision of the Goods and Services.

5.2 You acknowledge and agree that, to the extent the Services are WHS compliance services:

(a) any recommendations we make during the provision of the Services are based on the information you have provided to us;

(b) the accuracy, completeness and cost of those recommendations may be affected by changes in circumstances at any time, or due to information not disclosed by you or which may not be accurate;

(c) the purpose of the Services is to assist you in achieving compliance with WHS requirements based on the information you have provided to us, but is not a guarantee that you are WHS compliant, and you remain solely responsible for complying with your own WHS obligations, including giving notifications and acting on findings;

(d) the Services do not constitute legal advice. You may wish to supplement our recommendations with legal advice;

(e) we are not an insurer of the Site or other property or risks;

(f) the Services are not life-saving and do not provide a guarantee that your Site or workplace is safe or compliant with WHS requirements or any Commonwealth or State legislation, Australian standards, local regulations or the Building Code of Australia or for insurance purposes.

5.3 We recommend that you effect and maintain all normal and prudent insurance policies for all usual risks including public liability, workers compensation (if applicable), fire, burglary, theft and consequential loss and damage, as well as exercise all reasonable precautions that can be expected from a prudent and diligent building owner or occupier or employer.

5.4 You acknowledge that we may pay a referral fee or give another financial benefit to third parties who refer you to us, at no additional cost to you. Any such fee or financial benefit shall be disclosed to you in the Quote.

5.5 You acknowledge and agree that any reports or recommendations that we provide under this Agreement are solely for your benefit and cannot be relied on by any third party.

6. Limitation on liability

6.1 To the fullest extent permitted by law, we exclude all statutory and implied terms, conditions, guarantees and warranties in respect of the Goods or Services, except those the exclusion of which would contravene any statute or cause this clause to be void.

6.2 To the fullest extent permitted by law, our liability to you in connection with our supply of a Good to you is limited to, at our option:

(a) our repair of the Good;

(b) our replacement of the Good; or

(c) a refund of the price you paid for the Good.

6.3 To the fullest extent permitted by law, our liability to you in connection with our supply of a Service to you is limited to, at our option:

(a) the re-supply of the Service;

(b) the payment of the cost of having the Service supplied again; or

(c) a refund of the price you paid for the Service.

6.4 Whilst we take all reasonable care in making recommendations, to the extent permitted by law, we are not liable for any loss, expense or liability that you may incur from implementing our recommendations.

6.5 To the maximum extent permitted by law, we exclude all liability (including, but not limited to, liability in tort, contract and for breach of statute) to you or any other person for:

(a) any claims made for injury, death, loss or damage caused to you (including your officers, employees, contractors, agents and invitees) or the Goods resulting from your breach of these Terms, an unsafe workplace, a Cyber Security Event or any event beyond our control;

(b) any loss or damage consequential or otherwise for any special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, or revenue arising out of or in connection with the provision of the Goods or Services and whether as a result of any breach, negligence or otherwise by us suffered or incurred by you or any other person in relation to the Goods and Services.

6.6 To the extent that we provide you with a Digital Good, you acknowledge and agree that:

(a) you are purchasing the version of the Good that is current as at the date of purchase, and we are not required to update, support or maintain, or provide you with a later version of, that Good unless expressly agreed by us in writing on a case by case basis;

(b) it is likely that over the course of time, the Good will become incompatible with various technological infrastructure or systems, at which time it may cease functioning; and

(c) we may be able to diagnose and fix any issue with a Digital Good for an additional agreed price.

7. Indemnity

7.1 You indemnify us and hold us harmless against any and all actions, claims, proceedings, costs, losses, expenses, liabilities (including legal fees on an indemnity basis) whatsoever and howsoever caused or arising out of, connected with, or resulting from: (a) your breach of this Agreement; or (b) any breach of any Law by us as a result of our compliance with your instructions or representations made by you in connection with this Agreement.

8. Privacy and AI

8.1 We will take reasonable steps to protect your personal information from misuse, interference, loss and from unauthorised access, modification or disclosure. When your personal information is no longer needed, and when we have ceased to be legally obliged to retain the information, we will take reasonable steps to ensure that the information is destroyed or de-identified.

8.2 You acknowledge and agree that we collect your personal information such as your name, address, telephone number(s), and if required, the names, addresses and telephone number(s) of your nominated contacts for the purpose of providing you with the Goods and Services.

8.3 By entering into this Agreement, you agree that:

(a) we may forward to you from time to time promotional material and information regarding any of our goods and services, unless you request us (either by phone, email, letter or facsimile) to stop using your personal information for the purpose of direct marketing; and

(b) we may disclose your personal information to other organisations (including without limitation, related bodies corporate, subcontractors, service providers and government bodies and entities as well as artificial intelligence platforms) that assist us in the provision of the Goods and Services;

(c) we may use, and you consent to us using, third party artificial intelligence platforms, including Anthropic Claude, to assist with providing you with the Services;

(d) the information you provide to us in connection with the Services may be transmitted to, processed and/or stored on artificial intelligence servers outside of Australia (including the United States of America), provided that it is not stored for more than 30 days and is not used to train artificial intelligence;

(e) to the extent that you have purchased a licence from us to use software and that software uses artificial intelligence:

(i) such artificial intelligence will run on your own Anthropic account for which you are responsible and which you must maintain; and

(ii) you are responsible for checking the accuracy of draft documents generated by any artificial intelligence within the software;

(f) you are responsible for inputting accurate and complete information into any software in respect of which you have purchased a licence from us.

8.4 If you have provided us with personal information about another person (including your nominated contacts), you must inform that person that personal information has been supplied to us, the reason why it has been supplied and that they can contact us to obtain access to or update or correct their personal information.

8.5 You may access, correct or update your personal information that we hold at any time upon request.

9. Intellectual Property Rights

9.1 Full right, title and interest in copyright works created specifically for you as part of the Services will vest in you immediately upon payment of the fees for those Services, subject to clauses 9.2 and 9.3.

9.2 All intellectual property rights in materials supplied by you during the provision of the Goods and Services remains your property but you grant us a perpetual, irrevocable, royalty free, non-exclusive licence to use, reproduce and modify your materials for any purpose related to the provision of the Goods and Services.

9.3 We retain full right, title and interest in the templates, frameworks, methodology, software (including SafeBase and Command Centre) and codes used to provide you with our Goods and Services, including those used in the preparation of reports and the building of websites.

9.4 You agree to accept full responsibility for your materials and to indemnify us for any action, claim, liability, cost or expense arising out of any threatened or actual claim of intellectual property infringements arising out of our use of your materials.

9.5 In relation to Digital Goods:

(a) provided that you have paid the full fee for that Good, and subject to clause 6.6, we grant you an irrevocable, perpetual, non-exclusive, non-transferrable, non-sublicensable licence to use that Good (including any code used to produce the Good) in Australia solely for your ordinary business purposes ("**Licence**");

(b) full right, title and interest in the Intellectual Property in that Good remains with us;

(c) you must not reverse engineer or decompile our Intellectual Property to the Goods;

(d) you must not exploit the Goods or our Intellectual Property Rights in the Goods, including without limitation, using it for commercial purposes or on-selling it to third parties.

10. Confidentiality

10.1 We will not during or after the term of this Agreement, except in the proper course of the performance of this Agreement, use or disclose to any person without your previous consent in writing any Confidential Information.

10.2 Upon termination of this Agreement, upon your written request, we must return all Confidential Information to you and/or destroy any copies of any documents containing the Confidential Information, unless such information is required to be retained by law.

11. Force Majeure

11.1 If a Force Majeure Event occurs:

(a) the performance of the party affected by such Force Majeure Event ("Affected Party") under these Terms and Conditions is suspended for the period during which the Affected Party is reasonably prevented from performing an obligation which is caused by the Force Majeure Event;

(b) neither party will be liable for any loss, costs, expense, or damage of any kind resulting from its failure to perform this Agreement by reason of the Force Majeure Event; and

(c) such failure by the Affected Party will not be deemed to be a breach of this Agreement.

11.2 Where the Force Majeure Event continues for a period of 30 or more consecutive days, either party may terminate this Agreement without penalty by giving 14 days' written notice to the other party.

12. Termination

12.1 A party may terminate this Agreement by written notice to the other party:

(a) if the other party has breached an essential term of this Agreement and has not remedied that breach within 7 days of written notice of the breach by the other party;

(b) commits an act of bankruptcy or insolvency, is unable to pay its debts as and when they fall due, or is placed into liquidation, voluntary administration, receivership or small business restructure; or

(c) for any reason on 30 days' written notice to the other party.

12.2 Without limiting any other rights that we may have upon termination of this Agreement (including under clause 11.2):

(a) you must pay us, on demand and subject to the provision of a tax invoice, a fee for all Services we have provided to you as at the date of termination in respect of which payment has not been made, based on the time we have spent in providing those Services to you at our standard hourly rates, irrespective of whether the fee set out in the Quote was a fixed fee; and

(b) all amounts owing under this Agreement other than the fees for the Services, including expenses that are payable under this Agreement, shall become immediately due and payable.

12.3 Our standard hourly rates are the rates set out in the Quote.

12.4 Clauses 4.4 and 6 to 10 survive termination of this Agreement.

13. General Provisions

13.1 Either party may give the other notice under this Agreement by letter or email addressed to the address, or email address, as the case may be, last known to the party giving the notice. A notice is taken to be received:

(a) where posted, on the seventh day after posting;

(b) where sent by email, at the time the email left the sender's email system.

13.2 These Terms may be varied by written agreement of the parties

13.3 You must not assign, novate or subcontract your interests in this Agreement without our prior written consent. We may at any time assign, novate or subcontract any part of our rights and obligations under this Agreement without your consent.

13.4 This Agreement will be governed by and construed in accordance with the laws of Queensland. Each party hereby submits to the non-exclusive jurisdiction of the courts of Queensland and all courts having jurisdiction in appeal from those courts.

13.5 In no circumstance will you be entitled to withhold payment of any monies owing under this Agreement or to raise any deduction, set off or counterclaim in respect thereof relating to this Agreement.

13.6 Nothing in this Agreement creates an employment relationship, partnership or joint venture.

13.7 Each party must comply with applicable Laws including WHS, privacy, anti-bribery, corruption and modern slavery Laws.

14. Definitions

(a) "**Agreement**" means this agreement comprised of any Quote that has been accepted by you and these Terms.

(b) "**Cyber Security Event**" means any breach of security, failure of a safeguard, or compromise of a network, service, system, internet, wifi, software, firmware, or any associated device including but not limited to firewalls, switches, access points, computers, digital video recorders, control devices, mobile devices, cameras, IoT devices, and electronic locks. This includes, but is not limited to, unauthorised access or use of data, applications, services, or networks; physical security breaches affecting cybersecurity; data exfiltration or leakage; infections by malware, ransomware, spyware, or other malicious software or code; disruptions or denial of service attacks; and incidents resulting from phishing, social engineering, or other deceptive practices, including hacking.

(c) "**Confidential Information**" means all information, howsoever communicated or recorded, provided by you, or which comes into our possession, in the course of and by reason of this Agreement, including all trade and business secrets and other confidential information and documents relating to your affairs, but does not include information that is in the public domain for reasons other than the unauthorised disclosure by us;

(d) "**Digital Good**" means a licence to use our software or other digital products, including operating systems and digital portals;

(e) **"Force Majeure Event"** means:

(i) earthquake, volcanic eruption, act of God, fires (including bushfires), floods, lightning strikes, cyclones, hurricanes, storms, tropical storms, tidal wave, accidents, inclement weather;

(ii) strikes, lock-outs, bans, limitations of work or other industrial disturbance;

(iii) riots, war (including civil war), insurrection, vandalism, sabotage, national emergency (whether in fact or law), piracy, hijack, act of terrorism including the use or threatened use of violence or act putting the public in fear;
(iv) pandemic, epidemic, embargo, blockade, government acts regulations or requests, delays or interruption in transportation, inability to obtain resources, failure or interruption of utilities (including electricity and water), network failure, telecommunications breakdown, default by suppliers and subcontractors;
(v) temporary closure of roads, traffic conditions, motor vehicle breakdowns; and
(vi) any other event beyond the reasonable control of the Affected Party, which prevent or hinder the Affected Party from carrying out its obligations under this Agreement and being not due to its fault or negligence.

(f) **"Goods"** means the goods supplied, or to be supplied, by us to you, as set out in a Quote or otherwise agreed by the parties.
(g) "**GST**" means goods and services tax.
(h) "**Intellectual Property"** means any copyright, registered or unregistered designs or trade marks, domain names, know-how, inventions, formulae, processes, trade secrets, confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.
(i) "**Intellectual Property Rights"** means, for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.
(j) "**Law**" includes any statute, regulation, law and standard (whether Australian or International).
(k) **"Quote"** means a proposal for the provision of Goods and/or Services provided by us to you, specifying scope, deliverables and fees.
(l) **"Services"** means:
(i) the WHS compliance services;
(ii) the website development services;
(iii) auditing services, document reviews or advisory services; or
(iv) implementation and/or customisation of software,
provided, or to be provided, by us to you, as set out in a Quote or otherwise agreed by the parties.
(m) "**Site"** means the site in respect of which the Services are being provided.
(n) **"Terms**" means these terms and conditions.
(o) "**WHS**" means workplace health and safety.
"**you, your**" means the entity identified on a Quote as the customer, or if there is no Quote, the entity requesting or receiving Goods and Services from us.