

## WEBSITE TERMS AND CONDITIONS OF USE SERVICE

### 1. About the Website

- (a) Welcome to [www.acoye.com.au](http://www.acoye.com.au) (the '**Website**'). The Website Education programs and other information (the '**Services**'). The Website provides you with an opportunity to browse and purchase various products that have been listed for sale through the Website (the '**Products**'). The Website provides this service by way of granting you access to the content on the Website (the '**Purchase Services**').
- (b) The Website is operated by Acoye (ABN 22 636 037 806). Access to and use of the Website, or any of its associated Products or Services, is provided by Acoye. Please read these terms and conditions (the '**Terms**') carefully. By using, browsing and/or reading the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any of Services, immediately.
- (c) Acoye reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Acoye updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.

### 2. Acceptance of the Terms

- (a) You accept the Terms by remaining on the Website. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by Acoye in the user interface.

### 3. Registration to use the Services

- (a) In order to access the Products and Services, you must first register as a user of the Website (the '**Account**').
- (b) As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including:
  - (i) Email address
  - (ii) Mailing address
  - (iii) Telephone number
  - (iv) Name, company name, ABN

- (c) You warrant that any information you give to Acoye in the course of completing the registration process will always be accurate, correct and up to date.
- (d) Once you have completed the registration process, you will be a registered member of the Website ('**Member**') and agree to be bound by the Terms. As a Member you will be granted immediate access to the Purchase Services.
- (e) You may not use the Services and may not accept the Terms if:
  - (i) you are not of legal age to form a binding contract with Acoye; or
  - (ii) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.

#### **4. Your obligations as a Member**

- (a) As a Member, you agree to comply with the following:
  - (i) you will use the Services only for purposes that are permitted by:
    - (A) the Terms; and
    - (B) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;
  - (ii) you have the sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person may result in the immediate cancellation of the Services;
  - (iii) any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify Acoye of any unauthorised use of your password or email address or any breach of security of which you have become aware;
  - (iv) access and use of the Website is limited, non-transferable and allows for the sole use of the Website by you for the purposes of Acoye providing the Services;
  - (v) you will not use the Services or the Website in connection with any commercial endeavours except those that are specifically endorsed or approved by the management of Acoye;
  - (vi) you will not use the Services or Website for any illegal and/or unauthorised use which includes collecting email addresses of Members by electronic or other means for the purpose of sending unsolicited email or unauthorised framing of or linking to the Website;
  - (vii) you agree that commercial advertisements, affiliate links, and other forms of solicitation may be removed from the Website without notice and may result

in termination of the Services. Appropriate legal action will be taken by Acoye for any illegal or unauthorised use of the Website; and

- (viii) you acknowledge and agree that any automated use of the Website or its Services is prohibited.

## 5. Payment

- (a) Where the option is given to you, you may make payment for the Services (the 'Services Fee') by way of:
  - (i) Electronic funds transfer ('EFT') into our nominated bank account
  - (ii) Credit Card Payment ('Credit Card')
  - (iii) PayPal ('PayPal')
- (b) All payments made in the course of your use of the Services are made using Stripe and PayPal. In using the Website, the Services or when making any payment in relation to your use of the Services, you warrant that you have read, understood and agree to be bound by the Stripe and PayPal terms and conditions which are available on their website.
- (c) You acknowledge and agree that where a request for the payment of the Services Fee is returned or denied, for whatever reason, by your financial institution or is unpaid by you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the Services Fee.
- (d) You agree and acknowledge that Acoye can vary the Services Fee at any time.

## 6. Refund Policy

Acoye will only provide you with a refund of the Services Fee in the event they are unable to continue to provide the Services or if the President of Acoye makes a decision, at its absolute discretion, that it is reasonable to do so under the circumstances (the 'Refund').

## 5. Purchase of Products and Returns Policy

- (a) In using the Purchase Services to purchase the Product through the Website, you will agree to the payment of the purchase price listed on the Website for the Product (the 'Purchase Price').
- (b) Payment of the Purchase Price may be made through Stripe and PayPal (the 'Payment Gateway Provider'). In using the Purchase Services, you warrant that you have familiarised yourself with, and agree to be bound by, the applicable Terms and Conditions of Use, Privacy Policy and other relevant legal documentation provided by the Payment Gateway Providers.

- (c) Following payment of the Purchase Price being confirmed by Acoye, you will be issued with a receipt to confirm that the payment has been received and Acoye may record your purchase details for future use.
- (d) Acoye may, at their sole discretion, provide a refund on the return of the Products within 7 days where the Product packaging is unopened and remains in a saleable condition. You acknowledge and agree that you are liable for any postage and shipping costs associated with any refund pursuant to this clause.

## 6. Warranty

- (a) Acoye's Products come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure of the Product and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure (the '**Warranty**').
- (b) You may make a claim under this clause (the '**Warranty Claim**') for material defects and workmanship in the Products within 30 days from the date of purchase (the '**Warranty Period**').
- (c) In order to make a Warranty Claim during the Warranty Period, you must provide proof of purchase to Acoye showing the date of purchase of the Products, provide a description of the Products and the price paid for the Products by sending written notice to Acoye at 21 Aspen Circuit, Springvale , Victoria, 3171 or by email at [mathew.card@acoye.com.au](mailto:mathew.card@acoye.com.au).
- (d) Where the Warranty Claim is accepted then Acoye will, at its sole discretion, either repair or replace any defective Products or part thereof with a new or remanufactured equivalent during the Warranty Period at no charge to you for parts or labour. You acknowledge and agree that you will be solely liable for any postage or shipping costs incurred in facilitating the Warranty Claim.
- (e) The Warranty shall be the sole and exclusive warranty granted by Acoye and shall be the sole and exclusive remedy available to you in addition to other rights and under a law in relation to the Products to which this warranty relates.
- (f) All implied warranties including the warranties of merchantability and fitness for use are limited to the Warranty Period.
- (g) The Warranty does not apply to any appearance of the supplied Products nor to the additional excluded items set forth below nor to any supplied Products where the exterior of which has been damaged or defaced, which has been subjected to misuse, abnormal service or handling, or which has been altered or modified in design or construction.

## 7. Delivery

- (a) You acknowledge that the Purchase Services offered by Acoye integrate delivery (the '**Delivery Services**') through the use of third party delivery companies (the '**Delivery Service Providers**').
- (b) In providing the Purchase Services, Acoye may provide you with a variety of delivery and insurance options offered as part of the Delivery Services by the Delivery Service Providers. You acknowledge and agree that Acoye is not the provider of these delivery and insurance options and merely facilitates your interaction with the Delivery Service Providers in respect to providing the Delivery Services.
- (c) In the event that an item is lost or damaged in the course of the Delivery Services, Acoye asks that you:
  - (i) contact the Delivery Service Provider directly to request a refund or to claim on any insurance options available; and
  - (ii) contact us by sending an email to [mathew.card@acoye.com.au](mailto:mathew.card@acoye.com.au) outlining in what way the Products were damaged in transit so we are able to determine if the Delivery Service Provider should be removed from the Purchase Services.

## 8. Copyright and Intellectual Property

- (a) The Website, the Services, the Products, and all of the related products of Acoye are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Services and compilation of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, Website code, scripts, design elements and interactive features) or the Services are owned or controlled for these purposes, and are reserved by Acoye or its contributors.
- (b) All trademarks, service marks and trade names are owned, registered and/or licensed by Acoye, who grants to you a worldwide, non-exclusive, royalty-free, revocable license whilst you are a Member to:
  - (i) use the Website pursuant to the Terms;
  - (ii) copy and store the Website and the material contained in the Website in your device's cache memory; and
  - (iii) print pages from the Website for your own personal and non-commercial use.

Acoye does not grant you any other rights whatsoever in relation to the Website or the Services. All other rights are expressly reserved by Acoye.

- (c) Acoye retains all rights, title and interest in and to the Website and all related Services. Nothing you do on or in relation to the Website will transfer any:
  - (i) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
  - (ii) a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
  - (iii) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process), to you.
  
- (d) You may not, without the prior written permission of Acoye and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website, which are freely available for re-use or are in the public domain.

## **8. Privacy**

- (i) Acoye takes your privacy seriously and any information provided through your use of the Website and/or Services are subject to Acoye's Privacy Policy, which is available on the Website.

## **9. General Disclaimer**

- (a) You acknowledge that Acoye does not make any terms, guarantees, warranties, representations or conditions whatsoever regarding the Products other than provided for pursuant to these Terms.
- (b) Acoye will make every effort to ensure a Product is accurately depicted on the Website, however, you acknowledge that sizes, colours and packaging may differ from what is displayed on the Website.
- (c) Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- (d) Subject to this clause, and to the extent permitted by law:
  - (i) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and

- (ii) Acoye will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- (e) Use of the Website, the Products, and the Services is at your own risk. Everything on the Website, the Products and the Services is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Acoye make any express or implied representation or warranty about the Services or any products or Services (including the products or Services of Acoye) referred to on the Website. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:
  - (i) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
  - (ii) the accuracy, suitability or currency of any information on the Website, the Purchase Service, or any of its Content related products (including third party material and advertisements on the Website);
  - (iii) costs incurred as a result of you using the Website, the Purchase Services or any of the Products;
  - (iv) the Services or operation in respect to links which are provided for your convenience the Services or operation in respect to links which are provided for your convenience
  - (v) the Content or operation in respect to links which are provided for the User's convenience;
  - (vi) any failure to complete a transaction, or any loss arising from e-commerce transacted on the Website; or
  - (vii) any defamatory, threatening, offensive or unlawful conduct of third parties or publication of any materials relating to or constituting such conduct.

## **10. Limitation of liability**

- (a) Acoye's total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including

negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services to you.

- (b) You expressly understand and agree that Acoye, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.
- (c) Acoye is not responsible or liable in any manner for any site content (including the Content and Third Party Content) posted on the Website or in connection with the Purchase Services, whether posted or caused by users of the website of Acoye, by third parties or by any of the Purchase Services offered by Acoye.
- (d) You acknowledge that Acoye does not provide the Delivery Services to you and you agree that Acoye will not be liable to you for any special, indirect or consequential loss or damage, loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Delivery Services.

## **11. Termination of Contract**

- (a) The Terms will continue to apply until terminated by either you or by Acoye as set out below.
- (b) If you want to terminate the Terms, you may do so by:
  - (i) providing Acoye with notice of your intention to terminate; and
  - (ii) closing your accounts for all of the services which you use, where Acoye has made this option available to you.
- (c) Your notice should be sent, in writing, to Acoye via the 'Contact Us' link on our homepage.
- (d) Acoye may at any time, terminate the Terms with you if:
  - (i) you have breached any provision of the Terms or intend to breach any provision;
  - (ii) Acoye is required to do so by law;
  - (iii) the provision of the Services to you by Acoye is, in the opinion of Acoye, no longer commercially viable.
  - (iv) the partner with whom Acoye offered the Purchase Services to you has terminated its relationship with Acoye or ceased to offer the Purchase Services to you;



- (v) Acoye is transitioning to no longer providing the Purchase Services to Users in the country in which you are resident or from which you use the service; or
  - (vi) the provision of the Purchase Services to you by Acoye is, in the opinion of Acoye, no longer commercially viable.
- (e) Subject to local applicable laws, Acoye reserves the right to discontinue or cancel your membership at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts Acoye's name or reputation or violates the rights of those of another party.
- (f) When the Terms come to an end, all of the legal rights, obligations and liabilities that you and Acoye have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of this clause shall continue to apply to such rights, obligations and liabilities indefinitely

## **12. Indemnity**

- (a) You agree to indemnify Acoye, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:

- (i) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with your content;
- (ii) any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so; and/or
- (iii) any breach of the Terms.

### **13. Dispute Resolution**

(a) **Compulsory:**

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

(b) **Notice:**

A party to the Terms claiming a dispute ('**Dispute**') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

(c) **Resolution:**

On receipt of that notice ('**Notice**') by that other party, the parties to the Terms ('**Parties**') must:

- (i) Within 28 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (ii) If for any reason whatsoever, 28 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the VCAT or his or her nominee;
- (iii) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- (iv) The mediation will be held in Melbourne , Australia.

(d) **Confidential:**

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the

extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

(e) **Termination of Mediation:**

If 2 months have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

**14. Venue and Jurisdiction**

- (a) The Services and the Products offered by Acoye is intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of Victoria, Australia.

**15. Governing Law**

- (a) The Terms are governed by the laws of Victoria, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Victoria, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

**16. Independent Legal Advice**

- (a) Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

**17. Severance**

- (a) If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.

**Approved by**

Signature:

Full Name: Kym O'Shannassy

Date: 22 Sept 2022