

# Teached.com.au Interface Use Terms

As at 1 May 2019

## PARTIES

**Provider** means Teach Ted Pty Ltd (ABN 31 630 223 639) of PO Box 4197, Oatley West NSW 2223, contactable on chat {a}teached.com.au.

**User** means you, the person getting Provider's Service.

## BACKGROUND

Capitalised words and phrases are defined in the section of the document entitled "Definitions".

(a) Provider operates the Interface.

(b) The parties intend that User will use the Interface on the terms and conditions of the Agreement.

It is agreed as follows.

### 1. Agreement Creation

User agrees to the terms of the Agreement by using the Services.

### 2. Agreement Duration

The Agreement will apply until Provider completes the Services.

### 3. Services Use

Provider grants User a right to use the Service subject to the terms and conditions of the Agreement.

### 4. Age Restrictions

User must be 18 years old or over to use of the Service, unless:

(a) User is at least 1 years old; and

(b) uses the Service with the permission and supervision of a guardian.

User's parent or legal guardian agrees that they will supervise User's use of the Service.

### 5. Product Purchases

User agrees:

(a) to pay Provider the amounts listed by Provider in exchange for the Products; and

(b) to pay Provider for the Products using the payment method specified by the User on the Services.

### 6. Declining Orders and Refunds

(a) Provider may decline an order for a Product at its discretion and will provide a full refund for any declined order; and

(b) otherwise the refund policy, available at <https://teached.com.au/policies>, will apply.

### 7. Product Delivery

User agrees that:

(a) the Products are the responsibility of User when they reach the delivery address; and

- (b) that the Products remain the property of Provider until User has paid Provider for the Products in full.

## **8. Intellectual Property Protection**

- (a) Provider reserves the right to alter any element of the Product IP at its discretion.
- (b) User agrees not to reverse engineer any part of the Product IP.
- (c) No licence or right is granted over any intellectual property in the Product IP unless explicitly described in the Agreement.
- (d) User does not have any right to resell or sub-licence the Product IP unless the Agreement explicitly provides otherwise.
- (e) If User provides Feedback to Provider, User Transfers Intellectual Property Ownership in the Feedback (and any resulting enhancements to the Service) to Provider.

## **9. Privacy**

- (a) Provider will store and use the Personal Information of User in accordance with Provider's Privacy Policy.
- (b) User is responsible for its own compliance with privacy law. Provider does not promise that any use of the Services by User complies with any privacy law.

## **10. Acceptable Use**

- (a) User agrees to use the Service in accordance with the law at all times and only in ways that the Service was designed to be used.
- (b) User agrees not to use the Service to communicate or store any Prohibited Information.
- (c) User agrees not to use the Service such that the use interferes with Provider's ability to provide the same service to other parties.
- (d) The parties agree that a breach of this acceptable use clause gives Provider the right to immediately suspend User's access to the Service until Provider is reasonably satisfied that the use breaching this clause will be discontinued.

## **11. Posted Information**

User agrees that:

- (a) it is responsible for the legal consequences arising from Posted Content;
- (b) Provider is in no way responsible for legal consequences arising from Posted Content;
- (c) Provider may edit or remove Posted Content at its discretion; and
- (d) User promises that it will not, by posting Posted Content, infringe the intellectual property rights of any third party, or cause Provider to do so.

## **12. Information and Reliance**

- (a) Provider does not promise that any Service Content is complete or correct.
- (b) User agrees that it should verify any Service Content before relying on it in any way.
- (c) Provider may change the Service Content at its discretion without any warning or notification to User.
- (d) To the extent that Service Content is third party advertising, User agrees that Provider does not endorse the third party advertiser or any of its information, products or services.

## **13. Limitation of Provider's Liability**

The amount User can claim from Provider in relation to the Agreement, Services and Products (including for any Example Limitation Risks) is Limited To The Legal Minimum.

## **14. Indemnity by User**

User will Cover All Costs of Provider arising from the risks described below, to the extent such losses are caused by the conduct of User.

**Risks from data**, including:

- (a) breaches of privacy or data protection law;
- (b) breach of any law in connection with spam;
- (c) third party loss from the storage of third party data; and
- (d) an individual pursuing a right under privacy or data protection law connected with conduct,

by Indemnifier in connection with the Agreement and Services.

**Risks from intellectual property**, including:

- (e) any third party claim or legal action for intellectual property infringement connected with conduct; and
- (f) infringement of third party intellectual property,

by Indemnifier in connection with the Agreement and Services.

**Risks from people and property**, including:

- (g) death or injury connected with conduct; and
- (h) property damage connected with conduct,

by Indemnifier in connection with the Agreement and Services.

**Risks from the Agreement**, including:

- (i) negligence;
- (j) third party reliance on the Agreement and Services resulting from conduct;
- (k) any act or omission;
- (l) delays; and
- (m) breaches,

by Indemnifier in connection with the Agreement and Services.

## **15. Cancellation for Convenience**

Either party may cancel the Agreement without giving reasons with 5 days of written notice.

## **16. Agreement Changes**

- (a) Provider may change the Agreement by notifying User in writing or by email with 5 days notice.
- (b) If User does not agree to the Agreement changes, User must cease using the Services.

## **17. End of Agreement**

### **17.1 Governing law**

The governing law of the Agreement will be New South Wales, and the parties agree that this state will be the exclusive jurisdiction for any proceedings under the Agreement.

### **17.2 Communications**

The parties may send Communications to other Agreement parties using the email addresses listed in the party details section of the Agreement.

### **17.3 Taxes**

- (a) Provider will be liable for all duties and taxes connected with the Agreement.
- (b) Provider will be liable for taxes incurred under GST Law.

### **17.4 Independence**

The parties enter the Agreement intending to be completely independent of each other, and not as a party to a joint venture, partnership or agency agreement.

**17.5 Retrospectivity**

The Agreement will apply retrospectively to anything (and any Indemnifier) provided by Provider to User within the scope of the Agreement prior to the commencement of the Agreement, unless the parties agree otherwise in writing.

**17.6 Agreement technicalities**

The parties agree to:

- (a) the Boilerplate Provisions; and
- (b) the Interpretation Principles.

**17.7 Defined words and phrases**

- (a) Defined words and phrases are capitalised. Clauses with defined phrases will be read in such a way that the rights and obligations described by the defined phrase are incorporated by reference into the clause.
- (b) The text of a defined phrase is for convenience only and is not legally effective, however, the operation of the rights and obligations in the definition of the defined phrase will be determined by the other words in the clause incorporating the defined phrase.

## DEFINITIONS

- 1. Account, Accounts**  
means a digital account used by User for the purpose of the Services.
- 2. Agreement, Agreements**  
means the agreement arising between the parties in accordance with this document and the other documents referred to by this document.
- 3. Assignee, Assignees**  
means the party receiving ownership of the Intellectual Property Rights in the Provision.
- 4. Assignor, Assignors**  
means the party transferring ownership of the Intellectual Property Rights in the Provision.
- 5. Boilerplate Provisions**  
The following sections apply to the Agreement.
  - 5.1. Further assurances**  
The parties agree to do everything required to give full effect to the Agreement.
  - 5.2. Entire agreement**  
The Agreement and any other document incorporated by reference constitute the entire legal agreement. The parties agree that they have not relied on any representation or statements outside the terms of the Agreement.
  - 5.3. Electronic signature**  
The Agreement may be executed or entered into electronically.
  - 5.4. Counterparts**  
The documents constituting the Agreement may be executed in multiple counterparts. The counterparts will be read as one legal document.
  - 5.5. Waiver**  
No right or obligation under the Agreement will be waived unless the waiver is explicitly waived in writing.
  - 5.6. Severance**  
Any unenforceable or invalid term of the Agreement will only be severed to the extent of the unenforceability or invalidity without affecting any other term in the Agreement.
  - 5.7. Binding on successors**  
The Agreement is binding on each party's successors and permitted assigns.
  - 5.8. Agreement expenses**  
The parties will cover their own expenses in preparing the Agreement documents.
- 6. Communication, Communications**  
means any contractual communication in connection with the Agreement.
- 7. Compulsory Condition, Compulsory Conditions**  
means any condition, warranty or guarantee that the law does not permit to be limited or excluded (such as the consumer guarantees under the *Competition and Consumer Act 2010 (Cth)*).
- 8. Consequential Loss, Consequential Losses**  
means any kind of consequential, special, incidental or indirect loss, including loss of profits, loss of revenue, expenses incurred, pure economic loss, loss of opportunity and any kind of punitive or exemplary loss or damages.
- 9. Cost, Costs**  
means any cost, expense, loss, damage, claim, demand, proceeding, judgment, settlement, lawyer or attorney's fees, court cost, or other liability, whether arising under contract law, tort law, legislation or otherwise.
- 10. Cover All Costs**
  - 10.1. Application of Indemnity**
    - (a) The Indemnities are subject to the application of any Compulsory Conditions.

- (b) To the fullest extent permitted by the law, the Indemnifying Party indemnifies the Indemnified Party and its directors, employees, agents and assigns, for all Costs suffered by them in connection with each of the Indemnified Risks.

**10.2. Scope of Indemnity**

- (a) The Indemnified Party must use reasonable endeavours to mitigate any Cost that arises that is subject to an Indemnity.
- (b) The Indemnity will not apply to Costs that are the subject of an Indemnity Exception, to the extent of that Indemnity Exception.

**10.3. Separate indemnities**

Each Indemnified Risk described in the Provision will give rise to a separate indemnity in relation to that Indemnified Risk on the terms and conditions in the Module.

**10.4. Indemnity details**

Any Indemnity created by the Provision:

- (a) will survive the termination of the Agreement; and
- (b) will be additional to any contractual damages that the Indemnified Party might otherwise be entitled to claim.

Unless otherwise stated in the Provision, the Indemnified Party may make a claim under any Indemnity before any liability is crystallised, loss sustained or cost incurred.

**11. Example Limitation Risk, Example Limitation Risks**

means any liabilities arising from the risks described below.

**Risks from advice, including:**

- (a) reliance on advice or opinions in whatever form;
- (b) incorrect technical advice or data; and
- (c) failure to provide correct information.

**Risks from data, including:**

- (d) breach of privacy or data protection law;
- (e) digital security issues like malware;
- (f) breach of any law in connection with spam;
- (g) the storage of any third party data;
- (h) corrupted or lost data; and
- (i) a third party pursuing a right conferred by privacy or data protection law.

**Risks from intellectual property, including:**

- (j) risks relating to infringement of third party intellectual property; and
- (k) any third party claim or legal action for intellectual property infringement.

**Risks from people and property, including:**

- (l) any death or injury; and
- (m) any property damage.

**Risks from the Agreement, including:**

- (n) negligence connected with the Agreement and its subject matter;
- (o) third party reliance on the subject matter of the agreement;
- (p) any act or omission connected with the Agreement;
- (q) any delay connected with the Agreement;
- (r) breaches of the Agreement; and
- (s) the termination of the Agreement.

**12. Feedback**

means any comments or suggestions on the Service by User resulting from use of the Services by User.

**13. GST Law, GST Laws**

means the *A New Tax System (Goods and services Tax) Act 1999* (Cth).

**14. Indemnified Party, Indemnified Parties**

means the party who is indemnified under the Provision.

**15. Indemnified Risk, Indemnified Risks**

means the areas of risk or potential liability described in the Provision.

- 16. Indemnifier**  
means the party or parties providing an indemnity under the clause using this definition, and if that is not applicable, the party or parties providing indemnities under the Agreement.
- 17. Indemnifying Party, Indemnifying Parties**  
means the party providing the Indemnity under the Provision.
- 18. Indemnity, Indemnities**  
means any indemnity created via the operation of the Provision and the Module.
- 19. Indemnity Exception, Indemnity Exceptions**  
means any exception described in the Provision to any Indemnity, Indemnities or Indemnified Risk.
- 20. Intellectual Property Rights, Intellectual Property Right**  
means, with the exception of moral rights and other inalienable rights, all right, title and interest, in each of the following in Australia and throughout the world, whether registered, unregistered or pending registration, and whether conferred by statute, common law, equity or otherwise:
- (a) copyright;
  - (b) trade marks;
  - (c) trade names, brand names or indications of source, appellation or origin;
  - (d) inventions including patents, utility patents, patent applications, utility patent applications, and utility models;
  - (e) circuit layout designs;
  - (f) registered or unregistered designs;
  - (g) rights in databases;
  - (h) topography rights;
  - (i) design rights;
  - (j) plant variety and plant breeder rights;
  - (k) domain name registrations;
  - (l) confidential information, trade secrets, and know how;
  - (m) any other intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967;
  - (n) any application for the registration of any of the above, and any rights to make such an application;
  - (o) any right to take action to enforce any of the above rights; and
  - (p) any licence from a third party to use any of the above.
- 21. Interpretation Principles**  
Unless the terms and conditions of the Agreement explicitly state otherwise, the Agreement will be interpreted as follows:
- 21.1. Parties**
- (a) a reference to a party includes that party's permitted assigns, administrators, successors, executors, legal representatives and any novated party;
  - (b) any reference to a trustee includes any substituted or additional trustee;
- 21.2. Grammatical Forms**
- (a) unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;
  - (b) 'including', 'includes' or any derivation of those words does not limit the matter in question to the things specifically mentioned in the applicable context;
  - (c) where a term is defined, other grammatical forms of that term will be taken to have the same meaning;
  - (d) headings are for convenience and will not affect interpretation;
  - (e) words in the singular will be taken to include the plural and also the opposite;

- (f) '\$' means the Australian dollar;
- 21.3. Document References**
- (a) a reference to a document will be to that document as updated, varied or amended;
  - (b) a document referenced by the Agreement will not take precedence over the referencing document;
  - (c) when any kind of legislative instrument is referenced, the reference will be taken to be that instrument as updated or substituted for by the legislative body in any way;
  - (d) where a "URL" is mentioned, the non-operation of the "URL" will not render the rights and obligations associated with it invalid;
  - (e) any referenced digital resource may be replaced with another digital resource that is a "copy" of the original resource;
- 21.4. Rights and Obligations**
- (a) a reference to a party's conduct includes omissions as well as acts;
  - (b) if a party is described as having discretion in a matter, the discretion in that matter will be interpreted as sole and absolute; and
  - (c) where a party is required to do 'anything necessary', this includes executing agreements and other legal instruments.
- 21.5. Binding version of the Agreement**
- (a) If the Agreement is signed on treescribe.com, the signed version on treescribe.com will take precedence over any other version on the interface.
  - (b) To the extent of any inconsistency between the signed version on treescribe.com and any other embodiment of the agreement (like email), the treescribe.com version will take precedence.
- 22. Limitation Exception, Limitation Exceptions**  
means the exception to the limitation of liability in the Module that the Provision may or may not describe.
- 23. Limitation Risk, Limitation Risks**  
means the risks that may cause liability described in the Provision.
- 24. Limitation Subject, Limitation Subjects**  
means the subject(s) of the limitation of liability in the Provision (if any).
- 25. Limited Party, Limited Parties**  
means the party whose ability to recover Costs is limited by the limitation of liability in the Provision.
- 26. Limited To The Legal Minimum**  
Limited Party deals with the Limiting Party in respect of the Limitation Subject at its own risk. To the fullest extent permitted by law, Limiting Party excludes all liability (including Consequential Loss) to Limited Party for any liabilities connected directly or indirectly with the Limited Party and Limiting Party dealings in relation to the Limitation Subject, including liabilities based on:
- (a) contract law;
  - (b) tort law; or
  - (c) legislation,
- and including liabilities caused by the Limitation Risks.  
Where there is a Limitation Exception, this limitation of liability does not apply to the subject of the Limitation Exception.
- 26.2. Indemnities not limited**  
The foregoing limitation of liability will not apply to indemnities given by Limiting Party to Limited Party under the Agreement.
- 26.3. Implied Conditions**  
To the fullest extent permitted by the law, all terms and conditions implied by any other source of law in relation to dealings between the Limiting Party and the Limited Party in respect of the Limitation Subject are excluded from the Agreement.
- 26.4. Compulsory Conditions**



To the fullest extent permitted by the law, Limiting Party's liability to the Limited Party for breaching a Compulsory Condition in relation to the Limitation Subject is limited to:

- (a) in a case where a breach is deemed to be a breach in respect of goods:
  - (i) the replacement of the relevant goods or the supply of equivalent goods;
  - (ii) the repair of the relevant goods;
  - (iii) the payment of the cost of replacing the relevant goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the relevant goods repaired; and
- (b) in a case where a breach is deemed to be a breach in respect of services:
  - (i) the resupply of the relevant services; or
  - (ii) payment of a sum equal to the cost of resupplying the relevant services.

The Limiting Party will choose which of these options will apply.

**27. Limiting Party, Limiting Parties**

means the party relying on the limitation of liability in the Provision.

**28. Module, Modules**

means the module of terms and conditions imported with a defined phrase by the relevant Provision.

**29. Moral Right, Moral Rights**

means the rights commonly referred to as "moral rights", such as the right of attribution, which are recognised in the jurisdiction of the Agreement.

**30. Personal Information**

means any information that is categorised as 'personal information' or 'personal data' under privacy law, or is otherwise regulated by privacy law.

**31. Posted Content**

means any content or information posted by User that is available to third parties.

**32. Privacy Policy**

means Provider's privacy policy published at <https://teachted.com.au/policies>.

**33. Product, Products**

means the products supplied by Provider via the Service, including:

- (a) Software; and
- (b) Books, gift packs, merchandise, etc.

**34. Product IP**

means the intellectual property in the Services provided.

**35. Prohibited Information**

means information:

- (a) that could reasonably be considered racist or hate speech;
- (b) that infringes the intellectual property rights of a third party;
- (c) to harass any third party;
- (d) that is pornographic in nature;
- (e) that could reasonably be categorised as 'malware'; or
- (f) that is unlawful.

**36. Provision, Provisions**

means, in relation to a particular instance of a defined phrase, the provision in the Agreement that uses the defined phrase.

**37. Service, Services**

means the services, provided by Provider to User including: development of material, consultations, etc.

**38. Service Content**

means any information, content or data provided with or in association with the Services.

**39. Transfer Exception, Transfer Exceptions**

means the exception to the transfer of Intellectual Property Rights.

**40. Transfer Subject, Transfer Subjects**

means the subject(s) of the transfer of Intellectual Property Rights in the Provision.

**41. Transfers Intellectual Property Ownership, Transfer Intellectual Property Ownership**

- (a) Assignor assigns all current and future Intellectual Property Rights in the Transfer Subject to Assignee.
- (b) The assignment is global unless the Provision specifies a particular territory for the assignment, in which case the Intellectual Property Rights are assigned in that territory only.
- (c) Assignor warrants and represents to Assignee that it has the right to transfer the Intellectual Property Rights under this clause and that the Assignee's legitimate exercise of the assigned Intellectual Property Rights will not infringe the rights of any third party.
- (d) Assignor agrees to do all things necessary to give effect to the foregoing assignment of Intellectual Property Rights.
- (e) Assignor gives (and where it does not hold the relevant Moral Rights warrants that it will obtain) any Moral Rights waivers and consents necessary to ensure the Assignee can deal in the Intellectual Property Rights in the Transfer Subject in accordance with this clause without infringing Moral Rights.
- (f) Where there is a Transfer Exception, the transfer of Intellectual Property Rights and obligations in relation to Moral Rights in the subclauses above will not apply to the subject of the Transfer Exception.