General Terms and Conditions of Business for the Provision of Training in Business Transactions by Jedox Pty Ltd ACN 137 055 068 (Jedox)  
(as of September 2015)

I. Introductory Provisions

1. General, Scope of Contract

1.1 Offers and training of Jedox, present or future relating to the provision of training, made in relation to the persons or entities listed in clause 1.1.2 herein take place solely on the basis of the present General Terms and Conditions of Business for the Provision of Training in Business Transactions (“Training Conditions for Business Transactions”). Jedox does not recognise any of general terms and conditions of customers, regardless if these conditions are contrary to, diverging from or otherwise different than the Training Conditions for Business Transactions of Jedox.

1.2 These Training Conditions for Business Transactions shall only apply to persons or organisations who are conducting commercial or independent professional activity at the commencement of the agreement (“entrepreneurs”). They do not apply to natural persons who enter into the agreement or acquire services from Jedox for personal, domestic or household purposes or another purpose not attributable to their commercial or independent professional activity (“consumers”).

1.3 Where other products or services are acquired from Jedox, such as jedox support services, Jedox cloud services, Jedox software licensing or Jedox business transaction services, other Jedox terms and conditions may apply to the provision of those services.

2. Subject of Contract, Conclusion of Contract

2.1 The details and information given on Jedox’s homepage and in Jedox product catalogues become a legally effective part of any contract only if the contract makes express reference to such details and information.

2.2 By accepting an offer from Jedox or placing an order with Jedox, in respect of training services, the customer agrees that it has read, understood and will be bound by these Training Conditions for Business Transactions, together with the written confirmation of order of Jedox and any notices posted by Jedox on its website from time to time pursuant to these Training Conditions for Business Transactions. If you are entering into these Training Conditions for Business Transactions as an agent, officer, employee or other representative of the customer, you warrant to Jedox that you have full legal authority to bind the customer to these Training Conditions for Business Transactions.

2.3 The content of any contractual relationship and the scope of the provision of training are governed solely by these Training Conditions for Business Transactions and the written confirmation of order of Jedox, however, in the event of a binding offer on 1 th e part of Jedox and its acceptance within the specified period, the contractual relationship is governed by these Training Conditions for Business Transactions and the written offer of Jedox. Collaborative agreements, verbal statements given by any employees or agents of Jedox or its related entities as well as changes or amendments to confirmed contracts must be confirmed by Jedox in writing to be effective; such written confirmation provided via fax or email shall be sufficient. The training services to be provided by Jedox to the customer are as set out or referred to in the written confirmation of order or as otherwise agreed by the parties in writing.

2.4 The customer is solely responsible for ensuring that its access to and use of the training services of Jedox complies with all applicable laws.

3. Training Descriptions, Offer and Quotation Documents, Reservation of Right to Make Modifications

3.1 Training descriptions on Jedox’s homepage, in catalogues, brochures, etc. do not create any warranty as to quality, nature or description.

3.2 The customer acknowledges that nothing in these Training Conditions for Business Transactions grants the customer any ownership of or rights in respect of the intellectual property in the training services provided by Jedox, the software or other technology of Jedox, the materials created or used by Jedox to provide the training services or any improvements to any of the aforementioned created in connection with the provision of the training services. Any intellectual property in respect of any of the training services, materials, software or technology of Jedox which is created by or vests in the customer is assigned to Jedox immediately upon the intellectual property being created or vesting in the customer and the customer agrees to do all things and execute all documents as is reasonably necessary to effect such assignment.

3.3 Jedox reserves the right to ownership of and title over, copyrights and intellectual or industrial property rights (including the right to register any such rights) in all offer and quotation documents of Jedox, in particular in test programs, illustrations and cost estimates. The documents listed above must be immediately returned to Jedox at Jedox’s request if an offer by Jedox is not accepted or otherwise on written demand by Jedox.

3.4 Nothing in these Training Conditions for Business Transactions grants the customer any ownership of or rights to use the trademarks of Jedox. The customer will not adopt, register or attempt to register or use any trade marks which are identical or deceptively similar to the trademarks owned by Jedox.

4. Customer obligations

The customer must:

(a) comply with all policies regarding the training offered by Jedox which Jedox notifies the customer of from time to time (which notification may be provided by Jedox making the relevant policies accessible via its website);

(b) not modify, adapt, translate, de-compile, disassemble or copy all or any part of the training services, training materials or any other services offered by Jedox;

(c) not create derivative works from all or any part of the training services, training materials or any other services offered by Jedox; and

(d) not make any part of the training services or training materials of Jedox publicly available.

5. Service Period

Service periods (including any timeframes, milestones or delivery dates in relation to services) are only binding if Jedox expressly confirms them in writing. Any service periods expressed by Jedox as being a target or estimate will not be binding on Jedox.

6. Prices

Unless agreed otherwise, the prices shown in Jedox’s current list of prices and conditions do not include Indirect Taxes or any other applicable statutory taxes or any shipping costs, which amounts will be payable by the customer in addition to the prices.

7. Terms of Payment, Customer’s Ability to Pay, Value Added Tax

7.1 Unless agreed otherwise, Jedox’s invoices shall be due for payment in full without deductions or set-offs within 30 days of the date of invoice. Deviating from sentence 1 the training fee for open enrollment training (clause 1.9) is payable upon registration. Payment is deemed to have been made from the point at which Jedox obtained unrestricted access to the amount (“Receipt of Payment”).

7.2 Cheques shall be accepted if agreed between the parties and shall be considered to be payment only once they have been unconditionally credited to Jedox. Any costs and expenses incurred thereby, in particular, bank, discount and other expenses, inclusive of any Indirect Tax thereon, shall be paid by the customer and shall be immediately due for payment.

7.3 Set-offs or reductions of the amount payable for counter claims or retention of payment with the effect of a set-off by the customer is only permitted if Jedox provides prior written consent to the set off or reduction (which consent may be given or withheld in the sole discretion of Jedox).

7.4 If the customer fails to pay any amounts payable to Jedox in respect of the services then (without limiting the other rights of Jedox in respect of the non-payment), from the commencement of the default until the outstanding amount (together with any interest) is paid in full, Jedox may require payment of interest on all unpaid amounts at the rate fixed from time to time by the Attorney General under the Penalty Interest Rates Act 1983 (Vic).

7.5 If after the commencement of the specific contract, it becomes apparent that the payment claim of Jedox or the ability of Jedox to recover payment (including a future payment) from the customer will be endangered by the inability of
customer to perform, Jedox shall be entitled to refuse its performance under the contract, including performance of any preparatory acts. The right to refuse performance shall cease to exist once payment has been made (including, in the case of a future payment, by the customer making that payment in advance) or customer provides security for payment (which security is acceptable to Jedox in its sole discretion). Jedox can set a time limit for provision of such payment or security. After expiration of such time limit, Jedox may terminate the contract effective immediately upon Jedox providing written notice of termination to customer.

7.6 All payments by the customer under or in connection with these Training Conditions for Business Transactions shall be made in full, without any deduction or withholding in respect of taxes unless the deduction or withholding is required by law. If the customer is required under any law to make a deduction or withholding in respect of taxes from a payment to Jedox under or in connection with these Training Conditions for Business Transactions, the customer must pay to Jedox an additional amount that ensures that, after the deduction or withholding is made, Jedox receives on the date of the payment an amount equal to the amount that Jedox would have received if the deduction or withholding had not been made.

7.7 Unless expressly stated otherwise, all fees and other amounts payable by the customer under or in connection with these Training Conditions for Business Transactions have been calculated without regard to any goods or services tax, value added tax, consumption tax or tax of a similar kind (“Indirect Tax”). Notwithstanding anything to the contrary in these Training Conditions for Business Transactions, if Indirect Tax is imposed upon or is payable by Jedox under or in connection with these Training Conditions for Business Transactions, the customer must pay to Jedox an amount equal to the Indirect Tax upon demand by Jedox.

7.8 If the customer is required by law to make any deduction or withholding for any taxes from any payments to Jedox under these Training Conditions for Business Transactions such that Jedox would not receive the full amount of the fees or other amounts payable, the customer agrees to:
   (a) deduct or withhold the amount for taxes from the payment;
   (b) promptly pay the amount deducted to the relevant government authority on time and otherwise in accordance with the relevant law;
   (c) provide to Jedox an original receipt, certificate or other evidence of payment of the deducted or withheld amount; and
   (d) pay an additional amount to Jedox at the same time as the affected payment is due so that, after making the deduction or withholding and any further deductions or withholdings on the additional amount payable under this clause 7.7(d), Jedox receives an amount equal to the amount it would have received if no deductions or withholdings had been made.

7.9 If the customer cancels the training up to two weeks before the start of the training, the customer will receive a refund of the registration fee minus a cancellation fee in the amount of AUD 50.00. If the customer cancels the training up to two weeks before the start of the training, the customer will receive a 50% refund. No refund can be made if the customer cancels less than two weeks before the start of the training. The same applies in the event of a “no-show”. The cancellation and rebooking of a confirmed training must be in writing. The customer agrees that the amounts payable to Jedox under this clause 7.9 are a reasonable and genuine pre-estimate of the loss Jedox will suffer in the event of cancellation by the customer.

7.10 Training materials handed out during the training are only intended for the personal use of the attendees. The customer and any training participant agrees that the training material received may not be copied in whole or in part, reproduced or made available to third parties without the prior written permission of Jedox. In no event will Jedox be liable for any claims arising from the infringement of copyrights or consequential damages due to unauthorized copying, in particular due to computer viruses. A data carrier belonging to the customer may not be used with a Jedox computer system without prior examination and express authorization through the conductor of the training.

10. Remuneration, Acceptance

10.1 Unless agreed otherwise, training services requested and commissioned by the customer shall be charged at daily rates to which ancillary costs for travel, accommodation and expenses in compliance with Jedox’s current list of prices and conditions are to be added. A service day is equal to eight hours. On-site services at customer premises will be rendered and billed in half or full days. Additional work in excess of eight hours will be prorated and billed additionally on the basis of the daily rate. Waiting times are deemed to be working times. Travel time is calculated separately and invoiced at the hourly rate of 1/16th of the agreed daily rate.  

10.2 Service days will be charged and invoiced monthly with the relevant ancillary costs. If ten or fewer service days have been ordered, these will be charged in advance; ancillary costs will be accounted for as specified in sentence 1. Clause 6.1 shall apply as to the due date of Jedox’s invoices.

10.3 The default interest to be paid by the customer in the event of late payment is governed by clause 6.4.

10.4 If the customer is in default of acceptance of the service days and fails to remedy that default within 7 days of Jedox notifying the customer of the default, Jedox may, terminate the contract by written notice to customer and/or claim damages in respect of the default. If Jedox claims damages, Jedox may without proof claim damages in the amount of 50% of the remuneration to cover its loss of profits. The parties acknowledge that this represents a genuine pre estimate of the loss Jedox will suffer in the event the customer is in default of acceptance of service days. The parties may furnish evidence that the actual damage was higher or lower.

11. Limitation of Liability

11.1 The products and services provided by Jedox may be subject to consumer
guarantees that cannot be excluded under the Australian Consumer Law or other applicable Australian State or Territory consumer protection legislation. If the customer is entitled to any remedy for breach of the consumer guarantees contained in the Australian Consumer Law then nothing in these Training Conditions for Business Transactions will operate so as to exclude, restrict or modify the application of any of the provisions of the Australian Consumer Law or any State or Territory consumer protection legislation, the exercise of a right conferred by such a provision, or any liability of Jedox for a breach of a condition, warranty or guarantee implied by such a provision, where the Australian Consumer Law or other relevant legislation would, under it, have that effect.

1. To the extent permitted by law, Jedox and its related entities expressly limit their liability for a breach of any condition, warranty or guarantee implied by virtue of any of the Australian Consumer Law or any other relevant legislation to, at the election of Jedox:

(a) in the case of goods, any one or more of the following:

i. the replacement of the goods or the supply of equivalent goods;
ii. the repair of the goods;
iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
iv. the payment of the cost of having the goods repaired; or

(b) in the case of services:

v. the supplying of the services again; or
vi. the payment of the cost of having the services supplied again.

In all other cases of liability of Jedox to customer, all compensation claims including due to the breach of a duty by Jedox, breach by Jedox of these Training Conditions for Business Transactions and due to tort by Jedox are excluded, so that, to the maximum extent permissible by law, Jedox is not liable for lost profit or other monetary damage incurred by the customer.

11.2 If Jedox is found to be liable to pay any damages, compensation or other amounts to the customer under or in connection with these Training Conditions for Business Transactions for any loss, however caused (including by the negligence of Jedox), suffered by the customer, the liability of Jedox for such damages, compensation or other amounts is limited to 15% of the total value of the service (with the total value of the service being the total amounts paid to Jedox by the Customer for the relevant service), which amount is the maximum, aggregate liability of Jedox to the customer for all damages, compensation, loss, claims or other amounts Jedox is liable to pay to the customer under or in connection with these Training Conditions for Business Transactions.

11.3 Without limiting any other provisions of these Training Conditions for Business Transactions, Jedox is not liable for any Consequential Loss (howsoever caused) suffered or incurred by the customer in connection with these Training Conditions for Business Transactions or the provision of the services. This clause applies even if Jedox knew or ought to have known that the relevant Consequential Loss would be suffered. Consequential Loss means loss beyond the normal measure of damages and further includes, without limitation, all indirect loss, all loss of revenue, all loss of reputation, all loss of profits, all loss of data, all loss of actual or anticipated savings, all loss of bargain, all lost opportunities, including opportunities to enter into arrangements with third parties, all loss of use, all cost of capital and all costs of substitute goods, facilities or services.

11.4 Without limiting any other provision of these Training Conditions for Business Transactions, if the customer failed to make backup copies in order to protect itself from loss of data, Jedox’s liability in cases of negligence which results in loss of data shall be limited to the recovery expenses that would have been incurred if backups had been made.

11.5 If Jedox’s liability is excluded or limited due to any of the aforesaid provisions, this shall also apply to the personal liability of Jedox’s employees, staff members, representatives, and agents.

12. Subcontractors

Jedox shall be entitled to engage subcontractors to carry out training, provided that such subcontractors each provide training through suitably qualified personnel.

III. Concluding Provisions

13. Confidentiality

13.1 The parties hereto each undertake to treat in strict confidence all items (e.g. software, documentation, information) received from or that become known via the other party before the conclusion of or in the performance of the contract and that are protected by law, that include business or operational secrets or that are described as being confidential - during and beyond the term of the contract - unless they become known to the public without infringement of the duty to maintain confidentiality. The parties shall keep and safeguard all such items such that third parties are completely denied access to them.

13.2 The customer agrees that it shall make the contractual products available only to those of its employees and other third parties that require such access to perform their respective tasks. The customer agrees to instruct such persons on the need to maintain secrecy and confidentiality with respect to such items.

13.3 Jedox shall process customer’s data required for the provision of training services in accordance with any relevant privacy or data protection laws and regulations that apply to Jedox as a provider of information technology services (including any applicable provisions of the Privacy Act 1988 (Cth)). However the customer is solely responsible for ensuring that the use of the training services by customer and the processing of customer’s data by Jedox as required for the provision by Jedox of the training services will comply with all applicable privacy or data protection laws.

13.4 Following successful provision of the services, we shall be entitled to cite the customer as a reference customer, including in marketing or promotional materials of Jedox.

§ 14 Termination

14.1 Jedox may terminate these Training Conditions for Business Transactions at any time and without cause by providing the customer with no less than 30 days’ written notice of termination.

14.2 Without limiting clause 14.1, Jedox may, by written notice to the customer, terminate these Training Conditions for Business Transactions with immediate effect if:

(a) the customer fails to comply with any written notice issued by Jedox requiring the customer to remedy a breach, non-observance or non-performance of the customer’s obligations under these Training Conditions for Business Transactions within seven business days of receiving that notice from Jedox;
(b) the customer commits a breach of these Training Conditions for Business Transactions which, in the opinion of Jedox, is incapable of remedy;
(c) the customer goes into liquidation, is wound up, becomes insolvent or has a receiver appointed over all or any substantial part of its assets; or
(d) the customer proposes or enters into any schemes of arrangements with its creditors.

14.3 Upon termination of these Training Conditions for Business Transactions taking effect:

(a) the customer must immediately:
   i. pay to Jedox all fees, expenses or other sums payable to Jedox under these Training Conditions for Business Transactions which have accrued or are payable as at the date of termination; and
   ii. return to Jedox all training materials or other documents provided to the customer by Jedox in connection with the training services;
   iii. provide Jedox with written confirmation that it has completed its obligations under this clause 14.3(a); and
(b) Jedox ceases to have any obligations under these Training Conditions for Business Transactions with respect to the provision of training or any additional services.

For the avoidance of doubt, following termination of these Training Conditions for Business Transactions taking effect, Jedox will be entitled to retain any fees paid by the customer, even if such amounts were paid in advance.

§ 15 Indemnity

15.1 The customer must indemnify and keep Jedox indemnified against any loss which arises directly or indirectly out of:

(a) any breach of these Training Conditions for Business Transactions by the customer including any breach in respect of which Jedox
exercises a right to terminate; or

(b) any negligent or unlawful acts of the customer or any of its related parties or their respective employees, officers, contractors or representatives,

except to the extent the relevant loss arises as a direct result of any breach of these Training Conditions for Business Transactions by Jedox or any grossly negligent or unlawful act of Jedox or any of its personnel.

§ 16 Place of Performance, Jurisdiction, Governing Law

16.1 If any provision of these Terms and Conditions is held by a Court or other competent authority to be unlawful, invalid, and unenforceable or in conflict with any rule or law, statute, ordinance or regulation then the validity and enforceability of the remaining provisions are not thereby affected.

16.2 These Training Conditions for Business Transactions and all legal relationships between Jedox and the customer shall be governed by the laws of the State of Victoria, and each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in the State of Victoria including the Federal Court of Australia.