

---

## Kymberlee Enterprises Pty Ltd T/A Bubble 'N' Kick Swim School – Terms & Conditions of Trade

---

### 1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “BKSS” means Kymberlee Enterprises Pty Ltd T/A Bubble 'N' Kick Swim School its successors and assigns or any person acting on behalf of and with the authority of Kymberlee Enterprises Pty Ltd T/A Bubble 'N' Kick Swim School.
- 1.3 “Student” means an individual currently enrolled or applying for enrolment with BKSS.
- 1.4 “Guardian” shall mean the parent/s and/or legal Guardian/s of the Student requesting from BKSS, the provision of Lessons to the Student and is the person (or persons) responsible for payment of the Fees where the Student is under eighteen (18) years of age. Where more than one the Guardian has entered into this Contract, both the Guardians shall be jointly and severally liable for all payments of the Fees (and where the context so permits the terms ‘Student’ or ‘Guardian’ shall be interchangeable to the other).
- 1.5 “Services” mean all Services provided by BKSS to the Student at the Student’s request from time to time.
- 1.6 “Lesson” or “Program” shall mean the swimming Lesson or learn to swim Program (‘Services’) provided by BKSS to the Student, and:
- (a) includes any teaching, advice or recommendations;
  - (b) where the context so permits shall:
    - (i) include any Resources (such as flipper boards, fins, pull buoys, and hand paddles etc.) supplied, or deposited incidentally by BKSS in the course of it conducting, or providing to the Student Services;
    - (ii) the terms ‘Lesson’ or ‘Program’ shall be interchangeable to the other.
  - (c) are as described on any invoice/Enrolment Form, or any other form provided by BKSS to the Student.
- 1.7 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.8 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Student does not wish to allow Cookies to operate in the background when ordering from the website, then the Student shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**
- 1.9 “Fee” means the Fee payable (plus any GST where applicable) for the Services as agreed between BKSS and the Student in accordance with clause 5 of this Contract.
- 1.10 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

### 2. Acceptance

- 2.1 The Student is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Student places an order for, or accepts Services provided by BKSS.
- 2.2 This Contract:
- (a) is effective from the date of the Student’s acceptance of these terms and conditions and continues unless/and until terminated by either party on two (2) weeks written notice to the other party in accordance with clause 19; and
  - (b) records the entire Contract between the parties as to its subject matter. It supersedes any prior understanding or agreements between the parties in connection with it.
- 2.3 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.4 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.5 None of BKSS’ employees, agents or representatives are authorised to make any representations, statements, conditions, views, opinions or agreements not expressed by the Director of BKSS in writing, nor is BKSS bound by any such unauthorised statements.
- 2.6 These terms and conditions are meant to be read in conjunction with BKSS’ Policies and Procedures. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.8 The Guardian acknowledges and agrees:
- (a) to ensure that any other siblings and other children that are in their care must be supervised at all times (including where young children are participating in a class, etc.); and
  - (b) that they may be required to participate in infant level classes.
- 2.9 Make-up Lesson/s are available for all Lessons that fall on any Queensland Public Holidays, the Easter long weekend and the two (2) weeks Christmas/New Year break, each year where BKSS will not be open. Any make-up Lesson are to be used in the current term or that Lesson/s will be forfeited.
- 2.10 Participation in any BKSS Program can be inherently dangerous. Serious accidents may happen which may result in injury or death to the Student. In enrolling in the Program, the Student acknowledges that the Student has read and understood this clause 2.10 and voluntarily accepts and assumes the inherent risk described.

### 3. Errors and Omissions

- 3.1 The Student acknowledges and accepts that BKSS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by BKSS in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by BKSS in respect of the Services.

---

## Kymerlee Enterprises Pty Ltd T/A Bubble 'N' Kick Swim School – Terms & Conditions of Trade

---

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of BKSS; the Student shall not be entitled to treat this Contract as repudiated nor render it invalid.

### 4. Change in Control

4.1 The Student shall give BKSS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Student and/or any other change in the Student's details (including but not limited to, changes in the Student's name, address, contact phone or fax number/s, change of trustees, or business practice). The Student shall be liable for any loss incurred by BKSS as a result of the Student's failure to comply with this clause.

### 5. Fee and Payment

5.1 At BKSS' sole discretion the Fee shall be either:

- (a) as indicated on any invoice provided by BKSS to the Student; or
- (b) the Fee as at the date of delivery of the Services according to BKSS' current price list.

5.2 At BKSS' sole discretion a non-refundable deposit of thirty-six dollars (\$36) will be required upon confirmation of the Student's enrolment with BKSS. The deposit acts a pro rata to cover the costs of the Students:

- (a) first (2) weeks of group classes; or
- (b) first private class.

5.3 Time for payment for the Services being of the essence, the Fee will be payable by the Student on the date/s determined by BKSS, which may be:

- (a) by way of instalments/progress payments in accordance with BKSS' payment schedule;
- (b) the date specified on any invoice or other form as being the date for payment; or
- (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Student by BKSS.

5.4 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Student and BKSS.

5.5 BKSS may in its discretion allocate any payment received from the Student towards any invoice that BKSS determines and may do so at the time of receipt or at any time afterwards. On any default by the Student BKSS may re-allocate any payments previously received and allocated. In the absence of any payment allocation by BKSS, payment will be deemed to be allocated in such manner as preserves the maximum value of BKSS' Purchase Money Security Interest (as defined in the PPSA) in the Services.

5.6 The Student shall not be entitled to set off against, or deduct from the Fee, any sums owed or claimed to be owed to the Student by BKSS nor to withhold payment of any invoice because part of that invoice is in dispute.

5.7 Unless otherwise stated the Fee does not include GST. In addition to the Fee, the Student must pay to BKSS an amount equal to any GST BKSS must pay for any supply by BKSS under this or any other agreement for providing BKSS' Services. The Student must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Student pays the Fee. In addition, the Student must pay any other taxes and duties that may be applicable in addition to the Fee except where they are expressly included in the Fee.

5.8 The Student acknowledges and agrees that the Student's obligations to BKSS for the supply of Services shall not cease until:

- (a) the Student has paid BKSS all amounts owing for the particular Services; and
- (b) the Student has met all other obligations due by the Student to BKSS in respect of all contracts between BKSS and the Student.

5.9 Receipt by BKSS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then BKSS' ownership or rights in respect of the Services shall continue.

### 6. Provision of the Lessons

6.1 Both parties agree that they shall make every endeavour to enable the Lessons to be provided/partaken in at the time and place as was arranged between both parties. In the event that BKSS is unable to provide Lessons as agreed solely due to any action or inaction of the Student then BKSS shall be entitled to charge an additional Fee for re-providing the Lessons at a subsequent date/time during the applicable term.

6.2 Any amendments to an existing booking arrangement must be submitted in writing to BKSS.

6.3 Lesson credit is a make-up Lesson of equal value. Monies will not be refunded or credited for any future Lesson Fees.

6.4 It is the Student's responsibility to arrange the re-scheduled Lesson. Where a Student cannot attend a Lesson, the Student must notify BKSS at least two (2) hours in advance of that Lessons scheduled start time to arrange a 'make-up' Lesson. A Lesson credit will only be provided when non-attendance occurs due to illness and BKSS has been notified within this timeframe.

6.5 There is no limit on the amount of make-up Lessons a Student can have, however any make-up Lesson must be used within the term; Lessons will not be carried over to the next term.

6.6 Make-up Lessons are non-refundable, cannot be transferred to other siblings or students, are not transferable for cash or transferable to outside of the current term and cannot be deducted/set-off for any other fees owing under this Contract. In the absence of any said notice of non-attendance, that Lesson is forfeited and BKSS is under no obligation to provide a make-up Lesson.

6.7 Re-scheduled Lessons or make-up Lessons times cannot be cancelled or changed once arranged, or that Lesson will be forfeited.

6.8 In the event of absent due to illness for an extended period of time, a medical certificate may be requested (at BKSS' sole discretion) to ensure the Student is well enough to resume Lessons.

6.9 All Students under three (3) years of age must wear a swim nappy unless COMPLETELY toilet trained.

6.10 The Student acknowledges and accepts that BKSS accepts no responsibility for any loss or damage to personal property brought to and/or left at BKSS' premises.

6.11 The Guardian acknowledges and accepts that where Guardians accompany the Student in the Lesson (up to Jellyfish level) they are required to wear a loose shirt/singlet over their swimwear.

**7. Attendance and Fitness to Participate**

- 7.1 It is recommended by BKSS that Students enter their scheduled Lesson area no more than two minutes (2mins) prior to the scheduled starting time of the Lesson.
- 7.2 It is the responsibility of the Student to advise if the Student is to be absent as soon as is practically possible, and inform BKSS of the estimated length of absence.
- 7.3 The Student will not be able to attend Lessons for any period of time during which:
- (a) the Student is suffering from any skin infection or other disease or condition which is contagious through normal social contact for the safety and wellbeing of other participants and teachers; or
  - (b) a medical practitioner has recommended the Student not attend.
- 7.4 The Student declares that the Student:
- (a) is and must continue to be medically and physically fit and able to participate in any BKSS Program;
  - (b) is not and must continue to not be a danger to him/herself or to the health and safety of others;
  - (c) will immediately notify BKSS in writing of any change in the Student fitness and ability to participate; and
  - (d) understands and accepts that BKSS will continue to rely upon this declaration as evidence of the Student s fitness and ability to participate.

**8. Emergency Contacts**

- 8.1 The Student must provide BKSS with the names and addresses of two (2) responsible persons over the age of eighteen (18) years who can collect the Student in case of an emergency or illness. When contacted by the Director of BKSS (or their delegate), the Student (or a responsible person authorised thereby) must go immediately to BKSS' premises to collect the sick or injured Student.

**9. Accident or Emergency**

- 9.1 Whilst every reasonable effort shall be made by BKSS to contact the Student (or Emergency Contacts) in the event of an accident or emergency, the Student/Guardian hereby gives authority to the Director of BKSS (or their delegate) to, on behalf of the Student, authorise the administration of medication, transportation to hospital and administration of treatment as is recommended by the Student's doctor, any attending doctor, ambulance officer, police or Government Officer. The Student will be responsible for any costs incurred as a result of transportation or treatment.

**10. Intellectual Property**

- 10.1 Where BKSS has designed, drawn, written, or created Programs, techniques and curriculum in relation to the Student, then the copyright in those designs, drawings, documents, Programs, techniques and curriculum shall remain vested in BKSS.

**11. Consents**

- 11.1 Unless expressly requested otherwise in writing, the Student acknowledges and consents to:
- (a) photograph and/or video record to be taken whilst participating in the Program. All photographs and/or videos taken by BKSS remain the property of BKSS and may be used for quality assurance, safety, assessment, planning, evaluation, documentation, and promotional or marketing purposes. At BKSS sole discretion a copy of any photographs and/or videos may be made available to the Guardian, all cost involved will be charged to the Guardian; and
  - (b) BKSS using (at any time and at no cost) the Student's name, image, likeness and performance in BKSS' Program for the purposes of marketing in any form of media.
- 11.2 It is BKSS recommendation that permission from any parents/guardians of the other students attending the Students Lesson is gained prior to capturing any photographs and/or videos.

**12. Resources**

- 12.1 Any Resources use in conjunction with the Lesson shall, at all times, remain the property of BKSS, and are returnable on demand thereby. In the event that the Resources are not returned to BKSS:
- (a) in the condition in which they originally supplied, BKSS retains the right to charge the Student the full cost of repairing (or replacing if required) the Resources; or
  - (b) at all, BKSS shall have right to charge the Student the full cost of replacing the Resources.

**13. Disciplinary Procedures**

- 13.1 If the Student is found to be harassing other students or staff, or failing to comply with BKSS' Policies and Procedures, will face disciplinary action. This may involve the expulsion of the Student from the Program immediately, without refund of Fees.

**14. Complaints and Grievance Policy**

- 14.1 The Student/Guardian shall be entitled to report The concern they may have in relation to Lessons, any matters of safety, care or quality of Services, or where the Student wishes to make a suggestion. These shall be addressed with the appropriate BKSS staff member, or if the complaint is in relation to any of the staff, to the Director of BKSS, where in most incidences the issue can be rectified.
- 14.2 All complaints must be made to BKSS in writing and will be acknowledged by BKSS (in writing) within seven (7) days of receipt. BKSS will take all reasonable steps to resolve any complaint within thirty (30) days of receipt of the complaint.
- 14.3 Where the complaint is in relation to any staff member of BKSS:
- (a) the complaint, and the identity of the complainant, will be kept confidential between the parties concerned;
  - (b) a written record of events will be documented by BKSS' director, in order to authenticate, monitor and evidence the complaint;
  - (c) all compiled written information will be considered by the Director of BKSS to enable an informed decision to be made regarding the complaint;

---

## Kymerlee Enterprises Pty Ltd T/A Bubble 'N' Kick Swim School – Terms & Conditions of Trade

---

- (d) the complainant and applicable staff member(s) will be advised of the outcome of the investigation and any disciplinary action, which will be managed in accordance with the Fair Work Act 2009, etc.;
- (e) in the event the complainant is unsatisfied with the outcome of the investigation, BKSS' management and the complainant shall confer to discuss the matter further;
- (f) if the complainant is still not satisfied with the outcome, they are within their rights to contact the Department of Education and/or the Australian Competition and Consumer Commission.

### 15. Personal Property Securities Act 2009 (“PPSA”)

- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Student acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
  - (a) all Resources previously supplied by BKSS to the Student;
  - (b) all Resources will be supplied in the future by BKSS to the Student; and
  - (c) all the Student's present and after acquired property being a charge, including anything in respect of which the Student has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Student to BKSS for Services – that have previously been provided and that will be provided in the future by BKSS to the Student.
- 15.3 The Student undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which BKSS may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, BKSS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Resources charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of BKSS;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Resources in favour of a third party without the prior written consent of BKSS.
- 15.4 BKSS and the Student agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Student waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Student waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by BKSS, the Student waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Student must unconditionally ratify any actions taken by BKSS under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 16. Security and Charge

- 16.1 In consideration of BKSS agreeing to supply Services, the Student charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Student either now or in the future, to secure the performance by the Student of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Student indemnifies BKSS from and against all BKSS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising BKSS' rights under this clause.
- 16.3 The Student irrevocably appoints BKSS and each director of BKSS as the Student's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Student's behalf.

### 17. The Commonwealth Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)

- 17.1 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

### 18. Default and Consequences of Default

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at BKSS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Student owes BKSS any money the Student shall indemnify BKSS from and against all costs and disbursements incurred by BKSS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, BKSS' contract default fee, and bank dishonour fees).
- 18.3 Further to any other rights or remedies BKSS may have under this Contract, if a Student has made payment to BKSS, and the transaction is subsequently reversed, the Student shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by BKSS under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Student's obligations under this Contract.
- 18.4 Without prejudice to BKSS' other remedies at law BKSS shall be entitled to cancel all or any part of any order of the Student which remains unfulfilled and all amounts owing to BKSS shall, whether or not due for payment, become immediately payable if:

---

## Kymerlee Enterprises Pty Ltd T/A Bubble 'N' Kick Swim School – Terms & Conditions of Trade

---

- (a) any money payable to BKSS becomes overdue, or in BKSS' opinion the Student will be unable to make a payment when it falls due;
- (b) the Student has exceeded any applicable credit limit provided by BKSS;
- (c) the Student becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Student or any asset of the Student.

### 19. Suspension and Termination of Enrolment

- 19.1 Without prejudice to any other remedies BKSS may have, if at any time the Student is in breach of any obligation (including those relating to payment) under these terms and conditions BKSS may suspend or terminate the supply of Services to the Student. BKSS will not be liable to the Student for any loss or damage the Student suffers because BKSS has exercised its rights under this clause.
- 19.2 BKSS may cancel these terms and conditions and/or terminate the Student's enrolment with BKSS at any time by giving written notice to the Student/Guardian. BKSS shall not be liable for any loss (including, but not limited to, loss of income) arising from such termination.
- 19.3 The Student/Guardian must provide BKSS at least two (2) weeks advance written notice of any intend to suspend or terminate enrolment. Failure to comply with this clause shall entitle BKSS to bill Fees accordingly for the next term, as it shall be considered that the enrolment is to continue.
- 19.4 The termination notice period commences from the date it is lodged with BKSS.
- 19.5 If the Student does not attend Lessons during the notice period, the Student/Guardian is still obligated to pay the applicable Fees.
- 19.6 Suspension of Lessons are available for foreseeable absences for a minimum of three (3) weeks up to a maximum of eight (8) weeks (including, but not limited to broken bones, illness and/or extended holidays, etc.). The Student's Lesson day/time will be retained as their regular spot upon the Student returns.

### 20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by BKSS is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. BKSS acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). BKSS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Students Personal Information, held by BKSS that may result in serious harm to the Student, BKSS will notify the Student in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Student by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to BKSS in respect of Cookies where transactions for purchases/orders transpire directly from BKSS' website. BKSS agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Student's:
  - (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to BKSS when BKSS sends an email to the Student, so BKSS may collect and review that information ("collectively Personal Information")In order to enable / disable the collection of Personal Information by way of Cookies, the Student shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via BKSS' website.
- 20.3 The Student agrees for BKSS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Student in relation to credit provided by BKSS.
- 20.4 The Student agrees that BKSS may exchange information about the Student with those credit providers and with related body corporates for the following purposes:
  - (a) to assess an application by the Student; and/or
  - (b) to notify other credit providers of a default by the Student; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Student is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Student including the Student's repayment history in the preceding two (2) years.
- 20.5 The Student consents to BKSS being given a consumer credit report to collect overdue payment on commercial credit.
- 20.6 The Student agrees that personal credit information provided may be used and retained by BKSS for the following purposes (and for other agreed purposes or required by):
  - (a) the provision of Services; and/or
  - (b) analysing, verifying and/or checking the Student's credit, payment and/or status in relation to the provision of Services; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Student; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Services.
- 20.7 BKSS may give information about the Student to a CRB for the following purposes:
  - (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Student including credit history.
- 20.8 The information given to the CRB may include:
  - (a) Personal Information as outlined in 20.3 above;
  - (b) name of the credit provider and that BKSS is a current credit provider to the Student;

- (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Student's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Student no longer has any overdue accounts and BKSS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of BKSS, the Student has committed a serious credit infringement;
  - (h) advice that the amount of the Student's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.9 The Student shall have the right to request (by e-mail) from BKSS:
- (a) a copy of the Personal Information about the Student retained by BKSS and the right to request that BKSS correct any incorrect Personal Information; and
  - (b) that BKSS does not disclose any Personal Information about the Student for the purpose of direct marketing.
- 20.10 BKSS will destroy Personal Information upon the Student's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.11 The Student can make a privacy complaint by contacting BKSS via e-mail. BKSS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Student is not satisfied with the resolution provided, the Student can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## **21. Insurance**

21.1 BKSS shall:

- (a) have Public Liability insurance of at least one million dollars (\$1m); and
- (b) whenever requested in writing by the Student, will produce evidence that such insurance is effected and maintained.

## **22. Limitation of Liability**

- 22.1 In no circumstances shall BKSS be liable for any personal injury resulting in injury or death, loss and/or damage or expense arising out of or caused by any act or omission of an employee of the Student whether or not any such act or omission is negligent.
- 22.2 The Student hereby disclaims any right to rescind, or cancel any Agreement with BKSS or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Student by BKSS, and the Student acknowledges that the Course are bought relying solely upon the Student's skill and judgment.
- 22.3 BKSS undertakes to act in all professional matters as a faithful consultant to the Student, whose interests will be watched over with skill and care. Notwithstanding, BKSS shall only be liable to the Student for the consequences of any negligent act, omission or statement of BKSS, and then only to the extent and limitations referred to herein.
- 22.4 Subject to clause 17 BKSS shall be under no liability whatsoever to the Student for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Student arising out of a breach by BKSS of these terms and conditions (alternatively BKSS' liability shall be limited to damages which under no circumstances shall exceed the Fee).
- 22.5 The liability of BKSS shall cover only direct loss or damage in respect of the Services, or other matters arising directly from the scope of the Services agreed in the quotation, and then only to the maximum limit specified as per clause 22.4. All references herein to loss or damage shall be deemed to exclude loss or damage sustained by any third party in respect of which the Student is liable and responsible (as between the Student and the third party) whether by statute, contract tort or otherwise.
- 22.6 The liability of BKSS to the Student shall expire twelve (12) months from the issue of the last invoice relevant to the particular Services, unless in the meantime the Student has made a claim in writing to BKSS, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.

## **23. General**

- 23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which BKSS has its principal place of business, and are subject to the jurisdiction of the Maroochydore District Courts of Queensland.
- 23.3 BKSS may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Student's consent.
- 23.4 The Student cannot licence or assign without the written approval of BKSS.
- 23.5 The Student agrees that BKSS may amend their general terms and conditions for subsequent future contracts with the Student by disclosing such to the Student in writing. These changes shall be deemed to take effect from the date on which the Student accepts such changes, or otherwise at such time as the Student makes a further request for BKSS to provide Services to the Student.
- 23.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.7 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.