

## Terms and Conditions of Use

These Terms and Conditions, the Combined FSG and PDS and the Policies constitute a contract between you and Flexischools.

Your use of the Flexischools Service constitutes acceptance of that contract.

### 1. DEFINITIONS

In these Terms and Conditions:

**Account** means the account of the Authorised User on the Flexischools Website restricted by a username and password which is used to access the Flexischools Service;

**Agreement** means the agreement constituted by the Combined FSG and PDS, these Terms and Conditions, the Policies and your completion of the online registration form;

**Authorised User** means a member of the school community who has an Account created by Flexischools for the purpose of allowing that person to access and use the Flexischools Service for the purpose of purchasing Goods and/or services from the Facility Provider;

**Combined FSG and PDS** means the Combined Financial Services Guide and Product Disclosure Statement issued by Flexischools made available on the Flexischools Website (as updated or amended from time to time);

**Facility Provider** means the entity from which Goods and services may be purchased using the Flexischools Service;

**Fees** mean the fees payable by you to Flexischools in relation to your use of the Flexischools Service as detailed in the Combined FSG and PDS;

**Flexischools** means InLoop Pty Ltd (ACN 114 508 771) trading as Flexischools;

**Flexischools Privacy Statement** means the Privacy Statement issued by Flexischools made available on the Flexischools Website (as updated or amended from time to time);

**Flexischools Service** means the service offered by Flexischools providing an efficient and convenient method of purchasing Goods and/or services from a Facility Provider and making non-cash payments for those Goods and/or services using the Flexischools Website;

**Flexischools Website** means the website at [www.flexischools.com.au](http://www.flexischools.com.au);

**Goods** mean food, drinks and other items supplied by a Facility Provider;

**Intellectual Property Rights** means all intellectual property rights, including: patents, copyright, rights in circuit layouts, registered designs, trademarks; and any application or right to apply for registration of any of those rights;

**Materials** means menus, customisation options, pricing, delivery times and other details regarding the supply of Goods or services;

**Non-excludable Australian Consumer Law** means rights or guarantees you may have under Schedule 2 of the Competition and Consumer Act 2010 (Cth) (and any equivalent State or Territory legislation) or other rights in relation to the supply of Goods or services (such as terms implied into a contract by the Australian Securities and Investments Commission Act 2001 (Cth) or any equivalent State or Territory legislation) that cannot lawfully be excluded;

**Order** means an order for Goods or services placed via the Flexischools Website;

**Policies** mean the policies applicable to the Flexischools Service (including the Flexischools Privacy Statement) made available on the Flexischools Website (as updated or amended from time to time);

**Terms and Conditions** means these Terms and Conditions of Use (as updated or amended from time to time);

**Transaction** means a purchase of Goods or services using the Account; and

**you** means the Authorised User of an Account and **your** is interpreted accordingly.

In these Terms and Conditions, any use of the verb includes, or of words such as for example or such as, do not limit anything else that is included in general speech.

## 2. ACCEPTANCE OF TERMS AND CONDITIONS

2.1 You acknowledge that if you are a parent or guardian, you may grant your child or ward access to Flexischools Service by allowing them to have a login to your Account or adding their student card to the Account. You also acknowledge that you take full responsibility for any actions taken by your child or ward (including their use of the Account either online or through the use of a linked student card) and agree to ensure that they comply with these Terms and Conditions.

2.2 By selecting the box "I have read and I agree to be bound by Flexischool's Terms and Conditions of Use" and clicking "Submit" when you create an Account, you agree to be bound by these Terms and Conditions, the Combined FSG and PDS and any Policies, including any update or amendment made to these in accordance with this Agreement.

## 3. GRANT OF LICENCE

3.1 Flexischools grants you a revocable, non-exclusive and non-transferable licence to participate in the Flexischools Service.

## 4. FLEXISCHOOLS SERVICE

4.1 The Authorised User acknowledges that sole responsibility for the preparation and supply of Goods or services purchased using the Account lies with the Facility Provider.

4.2 You can purchase Goods or services from a Facility Provider using the Flexischools Service. Your Account will be debited with the cost of the Goods or services and the Fees.

4.3 Orders must be placed before any specified cut-off time.

4.4 When an Authorised User performs a Transaction using the Flexischools Service, the charge will automatically be debited to the Authorised User's Account.

4.5 For prepaid Accounts:

(a) For each prepaid Account, Flexischools will maintain an Account for the purpose of accounting for all Goods and services purchased and Fees;

(b) The Authorised User must make an initial prepayment and then maintain the Account in credit by topping up the balance of the Account;

(c) Authorised Users may authorise Flexischools to automatically top up the Account from a nominated payment method when the Account balance falls to a nominated level;

(d) If for any reason any payment on a prepaid Account is dishonoured, Flexischools will debit the dishonour plus relevant fees against the Account;

(e) If for any reason a prepaid Account falls into debit, the Account will automatically be suspended unless the ability to operate in debit has been specifically agreed with the school and Facility Provider;

(f) The Authorised User will remain liable to pay any outstanding charges should the prepaid Account balance be insufficient to meet all charges; and

(g) Flexischools may close a prepaid Account at any time at its discretion or may refuse to accept an application for such an Account.

4.6 Subject to clause 4.7, each time a login issued to the Authorised User is used to complete a Transaction, whether by the Authorised User or another person, the Authorised User's Account will be debited with the relevant purchase amount.

4.7 If an Account login is compromised or stolen, the Authorised User must notify Flexischools in writing immediately and Flexischools will suspend the Account. The Authorised User will not be held responsible for any charges that might arise from the use of the compromised Account after the time the notification is received by Flexischools. The Authorised User will be entitled to a refund of any unused amount on a compromised prepaid Account.

## **5. YOUR OBLIGATIONS**

5.1 You are responsible for maintaining the confidentiality of the Account identification, password, security questions and answers and any other information specific to your Account. This includes ensuring the ongoing security of such items by regularly updating your security information.

5.2 You must immediately report any unauthorised use of the Account to Flexischools.

5.3 Flexischools may request that you or the school provide a photograph of individuals permitted by you to use your Account and the Flexischools Service. You acknowledge and agree that Flexischools may provide this photograph to the Facility Provider for identification purposes. Where the individual depicted in any photograph provided to Flexischools is a minor, you acknowledge and agree that you are the minor's parent or guardian and you consent to the photographs use in the

manner contemplated by this Agreement on the minor's behalf.

## **6. ADDING FUNDS ON YOUR ACCOUNT**

6.1 Flexischools will advise you on the available payment methods for adding funds to your Account which may vary from time to time.

6.2 Once Flexischools is satisfied that the funds have 'cleared', Flexischools will credit the Account. Depending upon the payment method selected, this process may take up to five business days.

## **7. FEES**

7.1 In consideration for providing access to the Flexischools Service, Flexischools may charge you Fees which are set out in the Combined FSG and PDS. You agree to pay all Fees as they become due and payable

7.2 Flexischools may amend the Fees from time to time on prior notice.

## **8. USE OF YOUR PERSONAL INFORMATION**

8.1 Flexischools collects and uses your personal information in order to provide the Flexischools Services (including establishing and administering your Account, communicating Orders of Goods and/or services to Facility Providers and informing you of available Goods and/or services) and will maintain electronic or other records for each Authorised User's Account. These records will contain the name and contact details of the Authorised User to whom the login was issued, other information provided during the Authorised User's registration process and details of all Transactions. Flexischools may exchange your personal information with third parties in the ordinary course of our business, for example with Facility Providers you have ordered from in order to allow them to provide the Goods and/or perform the services, with payment processing gateways, government agencies and service providers to Flexischools. The Authorised User consents to the use of the Authorised User's personal information for this purpose and acknowledges that it is the Authorised User's responsibility to advise Flexischools of any changes to the information provided in the Authorised User's registration (such as contact details).

8.2 Flexischools may also use or disclose personal information collected from Authorised Users for any other purpose mentioned in the Flexischools Privacy Statement, including notifying Authorised Users of new Goods and services available through the Flexischools Service, changes to conditions of use and changes to or discontinuance of services and for direct marketing from Flexischools and related market research. You may request not to receive direct marketing communication from Flexischools by sending an email to [help@flexischools.com.au](mailto:help@flexischools.com.au).

8.3 You agree that Flexischools may collect, use and disclose information associated with your use of the Flexischools Service provided that the information is de-identified, aggregated or otherwise made anonymous and use and disclose that de-identified, aggregated or otherwise anonymous information for any purpose with third parties provided that, in so doing, Flexischools does not reveal any personal information.

8.4 By using your Account, you consent to Flexischools collecting, using and disclosing your personal information in the manner described above.

## **9. CHARGEBACKS**

9.1 If you add funds to your Account using your credit card or through your bank account you must not charge back, cancel or de-authorise the credit card or bank account charge.

9.2 If you purchase Goods or services using the Flexischools Service, you must not charge back, cancel or de-authorise the credit card or bank account charge.

9.3 Should you breach clause 9.1 or 9.2, Flexischools may, at its sole discretion, recover the cost of any Goods or services purchased by you and the amount of any chargeback or other fees incurred by Flexischools. This will be achieved by reducing your Account balance, re-charging your credit card or bank account for the amount or otherwise collecting such amount from you.

## **10. INTELLECTUAL PROPERTY RIGHTS**

You acknowledge that these Terms and Conditions do not transfer any Intellectual Property Rights to you in the Flexischools Service, the Flexischools Website or its contents.

## **11. TERMINATION**

11.1 Flexischools may suspend or terminate the licence granted under clause 3 and remove your access to and your participation in the Flexischools Service at any time and for any reason, including but not limited to:

- (a) breach any of these Terms and Conditions; or
- (b) if there is a suspicion that the Account has been used for unauthorised, unusual or illegal activity; or
- (c) if a Transaction has not been performed on the Account for more than 12 months and the Account balance is zero.

11.2 Authorised Users may terminate this Agreement by going to "MyAccount" in the Flexischools Website or requesting the closure of their Account via email to [help@Flexischools.com.au](mailto:help@Flexischools.com.au). In the case of prepaid Accounts the Authorised User may also be entitled to a refund of any unused funds in accordance with clause 12.3.

11.3 On termination of these Terms and Conditions:

- (a) your access to the Flexischools Service will be removed by Flexischools; and
- (b) any outstanding balances on your Account will be refunded as outlined in clause 12.3.

11.4 Despite any other provision of this Agreement, this clause 11 and clauses 5, 7, 10, 12, 13 and 14 will survive termination of this Agreement.

## **12. REFUNDS**

12.1 In the event of an Authorised User reporting to Flexischools either:

- (a) a failure of the Facility Provider to supply the Goods or services, or

(b) the Goods or services being unsatisfactory upon receipt;

Flexischools will pass the details of the Authorised User complaint to the Facility Provider. If the Facility Provider wishes to grant a full or partial refund, it is the responsibility of the Facility Provider to either refund the customer directly, or provide the refund value to Flexischools and have Flexischools credit the Authorised User's Account.

12.2 Flexischools will not provide cash refunds in any circumstances.

### **Refund for Account Closure**

12.3 In the event of receiving a request from the Authorised User to close their Account, Flexischools will refund the remaining value of the Account (less any Orders which have been processed by the Facility Provider) by one of the following methods at Flexischools' discretion:

- (a) credit card refund using the credit card originally used to place funds into the Account;
- (b) PayPal refund using the PayPal account originally used to place funds into the Account; and
- (c) EFT payment into the Authorised User's nominated bank account.

The refund will be provided within 10 business days.

12.4 If any refund requires Flexischools to obtain Account details from the Authorised User and Flexischools is unable to obtain the Account details from the Authorised User following reasonable attempts and a reasonable attempt is made for a period of 30 days, but is unsuccessful, the balance will remain in your Account.

## **13. LIMITATION OF LIABILITY**

13.1 You agree and acknowledge that:

- (a) Flexischools is a distributor of the Facility Provider's Materials and is not responsible for the content of the Materials;
- (b) you have not relied on any representation, description, illustration or specification which is not expressly stated in this Agreement;
- (c) except for those required under any Non-excludable Australian Consumer Law, Flexischools make no warranties or representations about the Flexischools Service or its accuracy, reliability, completeness, currency, or ability to achieve any purpose;
- (d) except for liability for breach of any Non-excludable Australian Consumer Law, Flexischools is not liable for any loss or damage arising out of an Authorised Users use of the Flexischools Service;
- (e) the maximum aggregate liability of Flexischools for all proven losses, damages and claims relating to personal injury, sickness or death is limited to the amount set out in clause 13.3
- (f) Flexischools does not warrant that you will have continuous access to the Flexischools Service;
- (g) Flexischools is not liable if the Flexischools Service is unavailable for any reason;
- (h) Flexischools is not the supplier of Goods or services and is not liable for any claims in relation to the Goods or services, including their quality, merchantability or fitness for any particular purpose;

- (i) Flexischools is not a bank and does not pay interest on any funds held in your Account and Flexischools is entitled to any interest earned on funds held on your behalf;
- (j) Flexischools is not responsible for any instructions that you provide via the Flexischools Service and is not responsible for detecting any errors in your Account instructions;
- (k) Flexischools has no control over the quality, safety or legality of any items sold by a Facility Provider to any Authorised User or over any content used by a Facility Provider in its advertising or marketing;
- (l) Flexischools is not a party to any dispute between you and the Facility Provider. If you have a dispute with a Facility Provider, you release Flexischools (and our officers, directors, agents, related companies, subsidiaries, joint ventures and employees) from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with the dispute; and
- (m) Flexischools cannot and does not warrant that a Facility Provider will complete any Transaction.

13.2 Flexischools will not be liable to you for:

- (a) any indirect or consequential loss, damage or costs incurred by you; or
- (b) any loss or damage of any kind resulting from or in connection with negligence or breach of a term, condition or warranty that may be implied into this Agreement except for liability under Non-excludable Australian Consumer Law;

in each case, including any loss arising out of or in connection with the Flexischools Website, the Flexischools Service or this Agreement.

13.3 To the extent permitted by law, where Flexischools' liability is not excluded by clause 13.2, Flexischools' liability for a claim arising out of this Agreement or the Flexischools Service will in no event exceed the amount of any transaction Fees paid by you in respect of the Transaction in relation to which the claim arises.

## **14. INDEMNITY**

14.1 You agree to indemnify Flexischools and hold us, our officers, directors and employees harmless from any loss, claim or legal liability (including legal fees) arising out of your breach of the Agreement or your breach of any law or the rights of a third party relating to your use of the Flexischools Service.

## **15. MISCELLANEOUS**

15.1 Flexischools does not guarantee continuous, uninterrupted or secure access to the Flexischools Service.

15.2 This document sets out the entire Agreement between the parties in relation to its subject matter and all prior representations are excluded.

15.3 Flexischools may suspend your access to the Flexischools Service in whole or in part at any time without notice or compensation where deemed necessary in Flexischools' sole discretion.

15.4 You may not assign or otherwise transfer any rights or obligations under this Agreement without the prior written consent of Flexischools. Flexischools may assign or otherwise transfer any rights or obligations under this Agreement at any time.

15.5 The Agreement and any other documents, information, statements, notifications, notices or other communications ("**Relevant Communications**") in relation to your Account and/or your use of the Flexischools Service may be provided to you by electronic means. You agree to receive all communications from us by electronic means and that Relevant Communications will be made available on the Flexischools Website.

15.6 We may set off any obligation which you owe us under this Agreement against the balance of your Account.

## **16. AMENDMENTS**

16.1 Flexischools may amend these Terms and Conditions, the Combined FSG and PDS and/or Policies from time to time by posting a revised version of such Terms and Conditions, the Combined FSG and PDS and/or Policies to the Flexischools Website and sending you an email notification. By continuing to use the Flexischools Service after any amendments to the Terms and Conditions, the Combined FSG and PDS and/or Policies, you agree to abide and be bound by any such changes. If you do not agree with any changes made to the Terms and Conditions, the Combined FSG and PDSs and/or Policies, you must terminate the Agreement by closing your Account and ceasing to use the Flexischools Service.

## **17. GOVERNING LAW**

These Terms and Conditions are governed by the law applicable in New South Wales, Australia and you irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that state.