

Terms of Use

Application

1. These Terms of Use (“**Terms**”) apply to your access to and use of our Services and our Website.
2. The Notice of Disclaimer also applies to your access to and use of our Services and our Website.
3. By using and accessing our Services and/or Website, you accept these Terms and the Notice of Disclaimer. Further, you agree that our publishing of an amended version of the Terms and/or Notice of Disclaimer will be sufficient notice of any changes and that your subsequent access to, viewing, reliance on or other use of our Services and/or our Website will constitute your acceptance of those amendments.

Access to and use of our Services

4. It is your responsibility, and not ours, for ensuring that you register for and access the correct Services.
5. As part of accessing and using the Services and/or our Website you may be required to create, or we may provide you with, a username and password.
6. You must always take any reasonable steps to secure your username, password, bank account details and other such information in order to prevent any unauthorised use of your details. You should notify us immediately if you suspect that such information and details have been used fraudulently or without your permission.
7. You may not have full access to our Services and our Website if access is via a mobile device. If you are unable to view relevant information you will need to obtain the information or document by accessing our Website and Services from a computer.

Personal and Confidential Information

8. You acknowledge and agree that:
 - a. in accessing and using our Services and Website you may be required to provide Personal and Confidential Information; and
 - b. you give your consent for us or our Personnel to disclose your Personal and Confidential Information to your employer or to a similar relevant entity for the

purpose of disclosing completion or other information in respect of the Services.

9. We will not disclose your Personal and Confidential Information to other third parties or for any other purpose, unless required under law or to professional advisers or where you have provided your explicit written consent.
10. You may choose not to provide your Personal and Confidential Information, however in doing so, we may not be able to supply the Services to you and you may not be able to access and complete the Services.
11. We may store your Personal and Confidential Information in hard copy or electronic format, in storage facilities that we own and operate ourselves or that are operated for that purpose by third parties. We take the privacy and security of your information under our control seriously.
12. If you wish to access any of your Personal and Confidential Information that we hold or would like to correct any errors in that information, please contact us.
13. Although we regularly review developments in security, we do not guarantee that information transmitted over the internet is totally secure. Therefore, when you send us information (including via an on-line form), you do so at your own risk. Once we have received it, we take reasonable steps to keep the information secure while it is in our own systems.
14. Our Website may contain links to other websites operated by third parties. We do not endorse or otherwise approve the owners or operators of the third-party websites, or the information, graphics and material on those websites or the services (including software) offered on those websites.

Payments

15. Once you register for a particular Service, the price is applicable and payable for that Service, and we have the sole discretion whether to refund a payment of the Price in whole or in part or to credit a payment toward another particular Service.
16. We reserve the right to change the prices for the Services from time to time; however the Price payable will be the price applicable as of the date of registering for the Services.

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17. You must make full payment of the Price and any other amounts payable to us on the date specified in the Services and/or on our Website, even where this is before you complete the Service (the “**Due Date**”).
 18. If you do not pay by the Due Date:
 - a. we reserve the right to block your access to the Services;
 - b. the amount owed by you will incur interest at the annual rate of 10% calculated from the due date of the payment until the date that full payment is received. You agree to pay that interest; and
 - c. you agree to pay for any enforcement costs, legal costs, court costs, and other associated costs we incur in chasing payment of your debt to us under these Terms.
 19. You must not withhold or set-off payment of any money owed to us, for any reason.
 20. You are not guaranteed any particular outcome from paying for the Services; we will issue a certificate of successful completion to you upon your successful completion of the relevant Service. If you do not successfully complete a particular Service, you may have to register for and pay for it again.
- a. we do not warrant that the Services are fit for any purpose whether made known to us;
 - b. we give no warranties as to the accuracy, suitability, or completeness of any information, statements, and representations contained on or accessed on and via our Services and our Website;
 - c. we do not warrant that the functions performed by our Website will be uninterrupted, timely, secure or error-free, or that defects in our Website will be corrected; and
 - d. although we will try to ensure that the Services will be accessible to you, we do not warrant that you will have continuous access to the Services.
25. Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or any Fair Trading Act except to the extent permitted by such Acts.
 26. To the extent permitted by law, neither we nor any of our Personnel are liable to you for any Claim or Liability caused by, arising from, or associated with:
 - a. information, statements, and representations on our Website and on our Services;
 - b. your use of and access to our Website and our Services;
 - c. use of our pay facilities whether used by you or someone unauthorised to do so;
 - d. any modification, suspension or discontinuance of our Website or of our Services or any part thereof;
 - e. consequences due to being unable to supply the Services, where the inability to supply is due to Events out of our reasonable control; and
 - f. any indirect or consequential loss (including any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.

Intellectual Property and copyright

21. All Intellectual Property Rights created by us in relation to the Services will remain with us and will not be assigned to you and no supply of Services to you will grant to you any Intellectual Property Rights.
22. The material on our Website and in our Services is protected by copyright. Other than for the purposes and subject to the conditions prescribed under the *Copyright Act 1968* (Cth), you must not reproduce, upload to a third party, link to, frame, store in a retrieval system or transmit any part of it without our explicit prior written consent.
23. You must not modify, reproduce, commercialise or exploit (in any form or by any means), for any reason outside the purpose of the supply of the Services, any part of our Services or Website without our explicit prior written consent.

Warranties, Liability, and Indemnities

24. You acknowledge that:

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27. You indemnify us and our Personnel from and against any Liability or Claim arising directly or indirectly in relation to:
- your breach of these Terms or of the Notice of Disclaimer;
 - the Services not being fit for any particular purpose; and
 - us having to resupply the Services, as a result of the actions or omissions of you or of any third party.
28. Each party must take reasonable steps to mitigate any Liability it suffers or incurs.
29. If you are dissatisfied with these Terms or with the Notice of Disclaimer, your remedy is to discontinue using our Services and our Website.
30. Our liability for any Liability or Claim in relation to these Terms and any supply of Services, or where any release or indemnity in these Terms or in the Notice of Disclaimer is unenforceable for any reason, will be limited to, to the extent possible, at our option, the resupply of the Services or the amount of the GST exclusive aggregate Price paid by you to us that gave rise to such liability, which will be in full and final satisfaction of any Liability and Claim.
31. If you:
- breach these Terms or the Notice of Disclaimer and you do not remedy the breach within 7 days of receiving a notice from us requiring you to do so; or
 - you breach these Terms or the Notice of Disclaimer which is not capable of remedy;
- all money owing is immediately due and payable, and we reserve the right to block your access to the Services and our Website.
- Interpretation and Definitions
32. The parties agree:
- these Terms do not create any partnership, joint venture, agency or relationship of employment between the parties;
 - these Terms may only be amended with our express written agreement;
 - any waiver by us must be express and in writing and signed by both of us, and it does not mean that any other provision is also waived;
33. In these Terms, and in the Notice of Disclaimer as applicable:
- the headings will not affect interpretation;
 - the singular includes the plural and vice versa;
 - any other grammatical form of a word or expression defined in these Terms has a corresponding meaning;
 - a reference to a document includes the document as novated, altered, supplemented or replaced;
 - a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
 - a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
 - a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
 - a word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to the word or expression in that Act;
 - the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
 - any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- d. all notices between the parties must be in writing;
- e. our rights under these Terms and in the Notice of Disclaimer do not exclude any of our other rights;
- f. the actions of any person claiming to have your authority will bind you to the extent permitted by law;
- g. if any provision of these Terms or of the Notice of Disclaimer is unenforceable, the provision will be severed and the remaining provisions will continue to apply; and
- h. these Terms and the Notice of Disclaimer will be governed by the laws of the State of South Australia.

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- k. any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- l. a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms; and
- m. if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

34. In these Terms, and in the Notice of Disclaimer as applicable:

“Claim” means any actual, contingent, present or future demand, claim, action, or proceeding for any Liability, restitution, equitable compensation, injunctive relief, specific performance or any other remedy, and whether direct or indirect, and whether under statute, contract, tort, negligence, equity, or otherwise.

“Events out of our reasonable control” include faulty equipment and technology, technological failures, technological upgrades or maintenance, illness, accident, quarantine, declared national emergencies, or weather conditions, which may inhibit or prevent us from being able to supply the Services.

“Intellectual Property Rights” means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields.

“Liability” means any loss, liability, cost, payment, damages, debt, or expense (including legal fees).

“Notice of Disclaimer” is the disclaimer appearing at the start of the Services or that may be displayed elsewhere in the Services and/or on or via our Website.

“Personal and Confidential Information” means your personal information, including as defined under the *Privacy Act 1988* (Cth).

“Personnel” means our employees, contractors, agents, officers, and directors.

“Price” means the price of the Services, which price is as nominated by us from time to time.

“Services” means the supply of the educational, training and other programs and courses offered and provided by us, and whether face-to-face or online including via our Website, as well as any other services we offer and provide to you.

“We”, “us”, “our” mean Blue Circle Publishing trading as Blue Circle Publishing ABN 99 163 760 772.

“Website” means any website and other online platform and social media operated by us by which our Services may be advertised, sold, viewed, and/or accessed.

“You”, “your” mean the person who accesses and uses or accepts the supply of the Services (and/or the entity, such as the employer, giving permission and paying for the supply of the Services, as the case may be).