

# Nail it & Scale it (NISI) General Terms and Conditions

## 1 Definitions

In this document, unless the context otherwise requires, the following words have the following meaning:

<b>Agreement</b>	means the Cover Page, the Schedule and these General Terms and Conditions.
<b>Attendee(s)</b>	means the person or persons named in Item 2 of the Schedule.
<b>Business day</b>	means any day other than a Saturday, Sunday or declared public holiday in the state of New South Wales.
<b>Business Mastery</b>	means Business Mastery Pty Ltd (ABN 71 099 095 128) and its Associated Entities as that term is defined in the <i>Corporations Act 2001 (Cth)</i> .
<b>Confidential Information</b>	means all information Business Mastery or its customers, clients, speakers or other attendees provides to the Purchaser or the Attendees at the Event, prior to the Event or after the Event, including but not limited to: <ul style="list-style-type: none"><li>(a) any of the Event materials,</li><li>(b) questions and comments by other attendees, business and commercial dealings, business and commercial information or trade secrets of Business Mastery, its customers, clients or employees or other attendees, and</li><li>(c) all notes, compilations, analyses, extracts, summaries and other records relating to anything referred to in (a) - (b) above.</li></ul>
<b>Digital Attendee(s)</b>	means any person who attends the Event virtually by livestream over the internet or other similar means.
<b>Event</b>	means the Nail It & Scale It event held by Business Mastery on the Event Date.
<b>Event Date</b>	means the date in Item 4 of the Schedule.
<b>Fee</b>	means the amount payable by the Purchaser to Business Mastery specified in Item 3 of the Schedule.
<b>Guarantor</b>	means the person named in Item 5 of the Schedule.
<b>Intellectual Property</b>	means all forms of intellectual property rights throughout the world including but not limited to present and future: <ul style="list-style-type: none"><li>(a) patents, utility models, copyrights, registered or unregistered trademarks and service marks, trade names, brand names, indications of source or appellations of origin, eligible layout rights, registered designs and commercial names and designations;</li><li>(b) all inventions, discoveries, trade secrets, secret process, know-how, computer products and confidential, scientific, technical and product information;</li><li>(c) all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields whether industrial or commercial;</li><li>(d) all letters patent, deeds of grant, certificates or documents of title for anything referred to in paragraphs (a), (b) or (c) of this definition and all media in which any thing referred to in those paragraphs is stored or embodied; and</li><li>(e) all enhancements to anything referred to in paragraphs (a) - (d),</li></ul> of any kind whether arising from statute, under common law or in equity.
<b>Learning Materials</b>	means all forms of material including but not limited to presentations, documents, webinars and other materials whether in the public domain or not that were created by or for Business Mastery for the purpose of: <ul style="list-style-type: none"><li>(a) any of Business Mastery's events, courses or coaching programs;</li><li>(b) promoting Business Mastery or any of their events, courses or coaching program; or</li><li>(c) any other activity of Business Mastery.</li></ul> Learning Materials may or may not be Confidential Information and/or Intellectual Property.
<b>Purchaser</b>	means the person named in Item 1 of the Schedule 1.
<b>You or Your</b>	means the Attendees and the Purchaser jointly and severally.

## 2 The Event

2.1 Business Mastery will host the Event on the Event Date.

## 3 Purchase

3.1 The Purchaser enters into this Agreement for the purpose of purchasing a ticket to enrol in and for the Attendees to attend the Event on the Event Date.

3.2 The Purchaser and any Digital Attendees will not allow or facilitate non-ticket holders to attend or view the Event. For example they will not allow non-ticket holders to view the Event whilst it is being livestreamed to a Digital Attendees' computing device or share their access credentials.

## 4 Fee

4.1 The Purchaser must pay the Fee as follows:

- (a) if no payment plan has been agreed with Business Mastery in full on or before the Event Date;
- (b) if a payment plan has been agreed with Business Mastery all instalments due must be paid and up to date on or before the Event Date.

4.2 The Attendees shall not be entitled to attend the Event if the Fee has not been paid in full or in accordance with any payment plan.

## 5 Refund, Transfer or Re-Scheduling

5.1 The Fee is strictly non-refundable. Unless the Purchaser becomes entitled to a refund under clause 7.2 or clause 8.4 refunds will not be paid.

5.2 Normally the Purchaser and/or the Attendees must attend the Event on the Event Date. If you do not attend the Event on the Event Date then, subject to the clauses 5.3 and 5.5 below, you will not be entitled to a refund, any relief from a payment plan or to attend the Event at a later date.

- 5.3 If the Attendees are unable to attend the Event on the Event Date the Purchaser or Attendees may, on the giving of five (5) Business Days' notice in writing prior to the Event Date, request to attend the Event at a later date, in which case the following conditions shall apply:
- (a) a transfer fee of \$250 plus GST is payable to Business Mastery.
  - (b) a transfer will not occur until the transfer fee has been paid.
  - (c) The Purchaser or Attendees must attend the next scheduled Event after the Event Date. If the Purchaser or Attendees do not attend the next scheduled Event then they shall not be entitled to a refund of the Fee and any unpaid instalments in respect of an instalment plan must still be paid.
  - (d) If there is more than one Attendee, and one Attendee requests to attend the Event at a later date then any discount applied to a second attendee is no longer applicable and the Purchaser must pay the full Fee for the second attendee to attend the Event at a later date. No transfer will occur until the full Fee (and the transfer Fee in (a) above) has been paid to Business Mastery.
- 5.4 A graduate ticket is not transferable.
- 5.5 In the Event a Purchaser or Attendee is unable to attend the Event on the Event Date due to unavoidable emergency or personal medical condition, a verified medical certificate must be emailed to support@kerwinrae.com with a request to attend the Event at a later date. In these circumstances Business Mastery may in its absolute discretion waive one or more of the conditions of transfer in clause 5.3.
- 5.6 If the Purchaser or Attendees fail to provide notice as required by clause 5.3 the ticket is not transferable and they shall not be entitled to a refund of the Fee and any unpaid instalments in respect of an instalment plan must still be paid.

## **6 Event Rescheduling**

- 6.1 Business Mastery may, in its sole and absolute discretion reschedule the Event. Rescheduling the Event includes but is not limited to changing the Event Date, the venue, the speakers, content and duration or any other component of Event.
- 6.2 The Purchaser is not entitled to make a claim for a refund, compensation or reimbursement of any additional expenses arising from rescheduling the Event.
- 6.3 In the event that a pandemic, epidemic, act of war, natural disaster, government directive, change in law and/or any other fact, matter or circumstance beyond the reasonable control of Business Mastery means that the Event cannot proceed on the Event Date then Business Mastery may:
- (a) reschedule the Event, including but not limited to changing the Event Date, venue, speakers, content, duration or any other component of Event; and/or
  - (b) transfer the Attendee(s) ticket(s) so that they may attend the Event on an alternate Event Date;
  - (c) alter the form of the Event so that it can proceed, including changing it to a livestream event that is attended remotely over the internet;
  - (d) postpone the Event for an unspecified time of no more than 6 months to enable it to determine which of (a), (b) and/or (c) above it will undertake in order to complete its obligations under this Contract.
- 6.4 The Purchaser is not entitled to make a claim for a refund, compensation or reimbursement of any additional expenses arising from any act or decision of Business Mastery under clause 6.3 above.

## **7 Event Cancellation**

- 7.1 Business Mastery may in its sole and absolute discretion cancel the Event at any time by providing the Purchaser or Attendees notice in writing.
- 7.2 If the Event is cancelled, the Purchaser or Attendees may either:
- (a) transfer their ticket to a future Event Date at no cost to the Purchaser or Attendees; or
  - (b) cancel enrolment at the Event within five (5) Business Days of receiving notification of the cancellation of the Event, at which time Business Mastery will refund any Fee paid by the Purchaser.
- 7.3 Other than as provided for in clause 7.2(b) the purchaser is not entitled to any refund, compensation or reimbursement of any additional expenses incurred or arising from the cancellation of the Event.

## **8 Nail It & Scale It Money Back Guarantee**

- 8.1 The clause 8 does NOT apply to Digital Attendees. Digital Attendees are not eligible for the money back guarantee.
- 8.2 A money back guarantee is available to Nail It & Scale It attendees that have purchased their tickets to the Event directly from Business Mastery. You must attend the complete Event, on all days, for the entire duration of each day, to be eligible for the money back guarantee.
- 8.3 A money back guarantee request can only be made:
- (a) by approaching a senior Business Mastery employee to notify them of your request to activate the money back guarantee;
  - (b) after the lunch break on the last day of the Event and before closure of the Event; and
  - (c) verbally and in writing.
- 8.4 If you comply with the clause 8.3 Business Mastery will authorise a refund in full of the monies paid under the Agreement. The Purchaser will not qualify for the money back guarantee if the request does not comply with clause 8.3.
- 8.5 No refund of K2 Elite administration fees and any other Business Mastery fees are available under this Clause 8.

## **9 Connectivity**

- 9.1 Digital Attendees require a high speed internet connection. If your connection speed is less than 10 mbps then your experience may not be optimal.

9.2 Business Mastery is not responsible for the effects of a slow, interrupted or faulty internet connection.

## **10 Confidential Information, Learning Materials And Intellectual Property**

10.1 The Purchaser and Attendees acknowledge that they do not have and nothing in the Agreement or any other agreement or document between them and Business Mastery gives them any right, title or interest in or to any of the Confidential Information, Learning Material or Intellectual Property.

10.2 The Purchaser and Attendees agree:

- (a) not to use the Confidential Information, Learning Material or Intellectual Property for any purpose other than their private business purposes, in particular they will not use the Confidential Information, Learning Material or Intellectual Property to in any way replicate the Event or create comparable or competitive services to Business Mastery;
- (b) to keep Confidential Information confidential and not disclose it to any third party, including directly or through a related party or entity other than if required by applicable law, regulation or court order; and
- (c) not do or cause to be done anything which may in any way jeopardise or adversely affect Business Mastery's ownership, use or any rights it may have in the Confidential Information, Learning Material or Intellectual Property.

10.3 In the event the Purchaser or Attendees breach this clause 10 of the Agreement Business Mastery may suspend or withdraw its consent to the Purchaser or Attendees using Confidential Information, Learning Material or Intellectual Property and may demand that the Purchaser or Attendees return all Confidential Information, Learning Material or Intellectual Property in their possession within 5 business days.

## **11 Filming**

11.1 The Purchaser and Attendees acknowledge and agree that the Event may be recorded and that Business Mastery shall own any and all recordings in any format and may in its sole and absolute discretion use any recordings for promotional and marketing purposes.

11.2 The Purchaser and Attendees irrevocably authorise Business Mastery to use their voice, materials, name and likeness for promotional and marketing purposes and materials in print, online and/or any other format.

11.3 The Purchaser and Attendees will not record or re-broadcast the Event or any part of it and will not use the name and likeness of Kerwin Rae, any Business Mastery staff or any other attendees for any purpose.

## **12 Financial Disclaimer**

12.1 All information provided to the Purchaser or the Attendees or that they have access to, as part of the Event is general information only and has been prepared without considering an individual's objectives, obligations, or financial situation. Business Mastery does not provide financial, taxation, legal or accounting advice. The Purchaser and Attendees are obligated to consider their personal and business objectives, financial situation and other personal or business needs or obligations, before taking or refraining from taking any steps based on information or suggestions provided throughout the Event.

## **13 Third Party Providers**

13.1 As part of the Event, Business Mastery may utilise the services of third parties to provide content and information. Business Mastery takes no responsibility and is not liable for the services, nor guarantees the performance of any product or service provided by third parties. The Purchaser and Attendees are under no obligation to use the goods or services of third parties and should always compare services/products while considering the individual's personal/business objectives, obligations, and financial situation.

## **14 Personal Guarantee**

14.1 The Guarantor unconditionally and irrevocably agrees to personally guarantee the performance of all of the Purchasers obligations under this Agreement and acknowledges that Business Mastery will have the right to demand and pursue the payment of all monies owed by the Purchaser under the Agreement without first being required to bring any claims or action against the Purchaser.

## **15 Facebook**

15.1 After attendance at the Event, Business Mastery may in its sole and absolute discretion provide the Purchaser or Attendees with access to the Kerwin Rae Graduates Private Facebook Group (the Group). The Group is intended to provide a platform for support, accountability and the opportunity to connect with other Event attendees and the Business Mastery team.

15.2 To protect the community of the Group and to ensure all graduates can be supported, the Purchaser and Attendees agree that the Purchaser or Attendees will not establish, join or contribute to any other Facebook group or other discussion forum which deals with, refers to or involves any K2 Elite Members or Kerwin Rae graduates or former of current Business Mastery employees, contractors or consultants, unless that group or forum is pre-approved or pre-endorsed in writing by Business Mastery. Participation in any such Facebook group or discussion forum is a material breach of the Agreement and Business Mastery reserves the right to terminate the Agreement, and/or cease any of its obligations to the Purchaser or Attendees, immediately in such circumstances.

15.3 Business Mastery may at its sole and absolute discretion remove any member or members from the Group for behaviour deemed culturally disruptive to the Group, including but not limited to direct marketing posts, spam content, and requests for members of the Group to 'like' their private Facebook groups or pages.

15.4 You agree you will not have any claim or right to compensation from Business Mastery related to the Group and that Business Mastery will not be liable for the activities of the Group and/or its participants, including but not limited to:

- (a) any products or services provided or sold, or other transactions, between Group members;
- (b) technical issues related to the administration of the Group or otherwise; or
- (c) any inability to, or decision not to, provide live Group updates during the Event.

## 16 Right to Refuse Service

- 16.1 Business Mastery retains the sole and absolute discretion to refuse service and/or entry to the Event, to a person or persons it reasonably believes may be engaging in illegal behaviour or conducting themselves in a way which would potentially bring Business Mastery, its employees, contractors, and/or clients into disrepute, or would unreasonably impact the fair and equitable operation of Business Mastery business practices.
- 16.2 Such behaviour or conduct may include, but is not limited to:
- (a) obscene or offensive language directed towards Business Mastery, its employees, contractors, and/or clients;
  - (b) intentionally attempting to disrupt the delivery of the Event;
  - (c) excessive communications with Business Mastery, its employees, contractors, and/or clients (whether face-to-face, written, electronic, or through any other medium; or
  - (d) sexual harassment, innuendo, intimidation and/or discrimination.

## 17 Disclaimer

- 17.1 To the fullest extent permitted by law but subject to the Australian Consumer Law, Business Mastery disclaims and excludes any and all guarantees, undertakings and warranties, representations expressed or implied, and shall not be liable for any loss or damage whatsoever (including human or computer error, negligent or otherwise, by one or more of the authorities, or incidental or consequential loss or damage) arising out of or in connection with any use or reliance on the information or advice provided at the Event, or in any other forum.
- 17.2 The Purchaser and Attendee(s) accept sole responsibility for the use of the material obtained during the Event, in any other forum or by any other means and agree that it is no substitute for financial, legal, taxation or consulting advice. Business Mastery recommends you seek external advice from appropriate experts specific to your business and personal needs.

## 18 Product Warranty

- 18.1 If any product provided with enrolment is found to be faulty, Business Mastery is only obliged to replace the faulty product if you request a replacement in writing within 10 Business Days of receiving the product.

## 19 No Guarantee of Results

- 19.1 Business Mastery takes no responsibility and provides no guarantee for the results achieved using the Learning Material or related methods. Example results used to promote courses, products or any other item are for reference only and in no way guarantees the same or similar results will be achieved. Results achieved will be dependent on many factors including, but not limited to, skills of the business owners and team, the method and speed of execution of any strategy, the market, force majeure, economic conditions and the existing position of the business and owners.

## 20 Non-Compete & Non-Solicitation

- 20.1 After completing the Event the Purchaser and the Attendees agree not to:
- (a) solicit or attempt to solicit business from any Client or Prospective Client of Business Mastery for the duration of the Restraint Period;
  - (b) engage or prepare to engage in a business that competes with the business of Business Mastery for the duration of the Restraint Period, this restriction includes, but is not limited to, engaging in workshops, coaching, consulting or public speaking business practices that involve the delivery of content, systems, and processes similar to that which you received from Business Mastery during the Event;
  - (c) solicit, attempt to solicit, entice or encourage any employee of Business Mastery to leave their employment for the duration of the Restraint Period; and
  - (d) interfere or attempt to interfere with the relationship between Business Mastery and its Clients, employees, contractors, partners or suppliers for the duration of the Restraint Period.
- 20.2 In this provision:
- (a) **Client** means any person, firm or company who at any time during the period of 12 months prior to the Event was a client of Business Mastery.
  - (b) **Prospective Client** means any person, firm or company who at any time during the period of 12 months prior to the Event was identified as a prospect of Business Mastery.
  - (c) Restraint Period means 1 year.
- 20.3 The restrictions in this clause apply to conduct which is either direct or indirect (eg done through an agent of any kind) and regardless of whether the conduct is engaged in for your own benefit or for the benefit of any other person or entity.

## 21 Privacy – Credit and Debts Due

- 21.1 Subject to its obligations under the *Privacy Act 1988, Privacy Amendment (Private Sector) Act 2000*, Business Mastery may give the information outlined below to a credit reporting agency to obtain a consumer credit report or to allow the credit reporting agency to create or maintain a credit information file about you.
- 21.2 You agree that Business Mastery may disclose a credit report about you and your relevant information to any credit provider, debt collection agency, legal representative, or insurer for the purposes of assessing your credit worthiness or to collect overdue payments (as the case may be).
- 21.3 Business Mastery may disclose the following information relating to you, including a director guarantee in accordance with the above:
- (a) Your name, address and the name and address of directors, as well as drivers licence details;
  - (b) Credit limits on your accounts;

- (c) The amount of any payments which are at least 30 days overdue;
- (d) Where an overdue payment has been previously reported, advice that the payment is no longer overdue;
- (e) Cheques, credit card or other payments which have been dishonoured;
- (f) Information that Business Mastery has ceased to provide services to you.

21.4 When reporting an unresolved debt due to a credit reporting agency, Business Mastery will provide the Purchaser with 14 days' notice prior to doing so.

21.5 The Purchaser agrees that Business Mastery may obtain information about you from any business which provides information about the creditworthiness of persons for the purposes of assessing your application and for collecting any overdue amounts. Business Mastery may refuse to supply services to you on credit based on its assessment of you.

## **22 General**

22.1 This document constitutes the entire and the only agreement between the parties in respect of its subject matter.

22.2 This document may only be varied or replaced by a document in writing duly executed by the parties.

22.3 A single or partial exercise or waiver of a right relating to this document will not prevent any other exercise of that right or the exercise of any other right. A party will not be liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

22.4 Subject to any express provision in this document to the contrary, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

22.5 Subject to any express provision in this document to the contrary, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

22.6 Each party shall promptly execute all documents and do all things that another party from time to time reasonably requires of it to effect, perfect or complete the provisions of this document and any transaction contemplated by it.

22.7 If a provision in this document is void, illegal or unenforceable, it must be varied to give effect to the intention of this document or severed without affecting the enforceability of the other provisions.

22.8 This document is governed by and construed in accordance with the laws of New South Wales, Australia.

22.9 Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts which have jurisdiction to hear appeals from any of those courts; and
- (b) waives any right to object to any proceedings being brought in those courts for any reason.