



Murdock
Cheng
Legal Practice

NFC GROUP PTY LTD

CONFERENCE

TERMS AND CONDITIONS OF SALE

Sydney Office

Level 10
50 Clarence Street
SYDNEY NSW 2000

T + 61 2 9262 5495
F + 61 2 9262 5496

Melbourne Office

Level 8
179 Queen Street
MELBOURNE VIC 3000

T + 61 3 8899 7870

mclp.com.au

1 About the Services

- 1.1 Thank you for visiting <http://testengineeringalliance.com> (the "**Website**"), a website that provides users with an opportunity to connect, learn and discuss issues which relate to the software testing industry by holding conferences such as the [Australian Testing Days](#) and [Quality Software Australia](#) (the "**Services**").
- 1.2 The Website and Services are owned and operated by NFC Group Pty Ltd (ACN 607 938 689) trading as Test Engineering Alliance (the "**Test Engineering Alliance**"). Access to and use of the Website, or any of its associated products and Services, is provided by Test Engineering Alliance. Please read these terms and conditions (the "**Terms**") carefully. By clicking "I agree to the Terms and Conditions" and/or by purchasing the Services, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of this Website immediately.
- 1.3 Test Engineering Alliance reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Test Engineering Alliance updates the Terms, it will use reasonable endeavours to provide you with notice of same. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, you should print off or save a local copy of the Terms for your records.

2 Offer and Acceptance of the Services

- 2.1 You may purchase a ticket for the Services either in person, by telephone, in print, by email or by completing and submitting the booking form on the Website. By purchasing a ticket for the Services, you are offering to purchase the ticket for the Services on and subject to the Terms.
- 2.2 After purchasing a ticket for the Services, you will receive an acknowledgement confirming your purchase order. This acknowledgement will only be an acknowledgement of receipt of the purchase order and will not constitute acceptance of your purchase. Test Engineering Alliance reserves its absolute discretion to reject your offer to purchase the ticket for the Services without having to provide you with any reason for doing same. A contract between you and Test Engineering Alliance will not be formed until Test Engineering Alliance accepts your purchase order and your payment has been processed.
- 2.3 Once payment has been processed, you will receive an email confirmation and an electronic tax invoice.
- 2.4 You acknowledge and agree that Test Engineering Alliance may, at its sole discretion, make any changes whatsoever relating to the Services, including the venue, programmes, date and time. You further acknowledge and agree that under no circumstances can Test Engineering Alliance guarantee the attendance of any third party contributors such as keynote speakers.

3 Using the Services

- 3.1 Prior to purchasing the ticket for the Services, you may be required to provide your personal information such as your name, occupation, address, email address and phone number.
- 3.2 You agree that any personal information you give to Test Engineering Alliance will always be accurate, correct and up to date.
- 3.3 You may not purchase the ticket for the Services and may not accept the Terms if:
 - (a) you are not of legal age to form a binding contract with Test Engineering Alliance; and/or
 - (b) you are a person barred from purchasing the ticket for the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.
- 3.4 By using the Website or purchasing the ticket for the Services, you represent and warrant to Test Engineering Alliance that:
 - (a) you have reached the legal age in your jurisdiction;
 - (b) you have the right, authority and capacity to enter into a contract with Test Engineering Alliance and to agree to and abide by the Terms;
 - (c) if you are purchasing the ticket for the Services on behalf of a business, that business is taken to have accepted the Terms and you are taken to have been duly authorised to bind the business; and
 - (d) you will use the Website in a manner consistent with any and all applicable laws, regulations and all other Test Engineering Alliance policies.

4 Pricing

- 4.1 In order to purchase the ticket for the Services, you are required to pay a ticket fee.
- 4.2 Whilst Test Engineering Alliance tries to ensure that all prices which appear on the Website are accurate and current, errors may occur. Test Engineering Alliance reserves the right to correct any errors and to change or update information at any time without prior notice. Test Engineering Alliance also reserves the right to refuse to fill any orders that you may place based on information on the Services that may contain errors.
- 4.3 Unless otherwise stated, all amounts, including out of pocket expenses, expressed and described on or in connection with the Terms, are listed in Australian Dollars (AUD) and are GST exclusive.

5 Discount

- 5.1 Test Engineering Alliance may offer early bird discount. To receive the early bird discount, you must ensure that Test Engineering Alliance receives both your order and payment prior to the early bird discount dateline as stated in the relevant marketing material.
- 5.2 Any discount given will only apply to a specific transaction and cannot be expected for any subsequent transactions.
- 5.3 Test Engineering Alliance may suspend or terminate the discount offer from time to time at its sole discretion.

6 Substitutions

- 6.1 Should an attendee be unable to attend, the attendee may nominate an alternative person from their organisation to attend, on the condition that Test Engineering Alliance is notified of all substitutions twenty-four (24) hours prior to the start of the event.

7 Cancellation and Refund

- 7.1 Once a ticket purchase order is placed, the ticket purchase order cannot be cancelled. However, you may nominate a substitute pursuant to clause 6.
- 7.2 There will be no refunds under any and all circumstances, including in the case of non-attendance.
- 7.3 Notwithstanding clause 7.2, if Test Engineering Alliance cancels or reschedules the conference for any reason whatsoever, Test Engineering Alliance may, at its sole discretion, either:
 - (a) refund any payments that have been made; or
 - (b) reschedule the conference to an alternative date.
- 7.4 In the event that the conference is cancelled or rescheduled, Test Engineering Alliance shall not be liable for any direct, indirect or other consequential loss claimed by the attendees and/or its officers, employees, subsidiaries, guests, contractors or invitees and no other amount shall be due or payable to the attendees.

8 Non-Payment

- 8.1 If your invoice remains unpaid for more than fourteen (14) calendar days from the date of the tax invoice,
 - (a) Test Engineering Alliance reserves the right to suspend or terminate the provision of the Services to you immediately, until all outstanding invoices have been paid or until a re-payment plan is mutually agreed upon;
 - (b) you may be charged the then current Test Engineering Alliance administration fee for each issuance of a payment reminder; and

- (c) you may also be charged interest in the amount of the Cash Rate Target set by the Reserve Bank of Australia (the "**Interest**") on amounts which remain unpaid after fourteen (14) days from the date of the tax invoice.

Upon payment of the administration fee, Interest and other outstanding fee in accordance with these Terms, Test Engineering Alliance may reinstate the Services to you.

- 8.2 If your invoice remains unpaid for thirty (30) calendar days from the date of the tax invoice, Test Engineering Alliance may proceed to recover the debt from you without further notice. If Test Engineering Alliance initiates debt recovery action against you, you acknowledge and agree that you will be and remain liable for all debt collection costs which includes any legal costs (on an indemnity basis), collection agency costs and any other expenses or disbursements, including but not limited to, Land and Property Information searches, Australian Securities and Investment Commission searches, process server fees, Expert Reports and court/tribunal fees. You will also be liable to pay the Interest and administration fee on the outstanding debt and Test Engineering Alliance may report the debt to a credit reporting agency.

9 Photographs and/or video-taping

- 9.1 You must not take photographs, record and/or video-tape the conferences without prior consent of Test Engineering Alliance.
- 9.2 You agree that Test Engineering Alliance, as the organiser of the conferences, is entitled to take photographs and/or video-tape the conferences.
- 9.3 If you appear in the photos and/or videos, you grant to Test Engineering Alliance and its successors an irrevocable, non-exclusive, transferrable, perpetual, royalty-free, worldwide license to broadcast, republish, up-load to a third party, transmit, post, distribute, publicly display, and otherwise use and exploit the photos and/or videos.
- 9.4 You further acknowledge that:
 - (a) Test Engineering Alliance owns all rights (including copyright) in the photos and videos;
 - (b) any use that Test Engineering Alliance makes of the photos and/or videos is an authorised use; and
 - (c) Test Engineering Alliance shall not be liable to you for any infringement of any of your rights arising from its use of the photos and/or videos, including (but not limited to) claims under tort law, contract law, and the *Competition and Consumer Act 2010* (Cth).
- 9.5 Should you not agree to clause 9.3 and 9.4, you must advise Test Engineering Alliance by email to australiantesters@gmail.com prior to the start of the conferences.

10 Copyright and Intellectual Property

- 10.1 The Website, Services, and all of the related products of Test Engineering Alliance are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the site content and compilation of the website (including text, graphics, logos, button icons, video images, audio clips and software) and all materials posted to the Website or provided to you by Test Engineering Alliance or any of its third party suppliers such as trainers and keynote speakers (the "**Content**") are owned or controlled by Test Engineering Alliance and are reserved by Test Engineering Alliance or its contributors.
- 10.2 Test Engineering Alliance retains all rights, title and interest in and to the Website, Services and all related content. Nothing you do on or in relation to the Website and/or Services will transfer any:
- (a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright,
 - (b) a right to use or exploit a business name, trading name, domain name, trade mark or industrial design; or
 - (c) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process),
- to you.
- 10.3 You may not, without the prior written permission of Test Engineering Alliance and the permission of any other relevant rights owners, broadcast, republish, up-load to a third party, transmit, post, distribute, show or display in public, adapt or change in any way the Content for any purpose. This prohibition does not extend to materials on the Website which are freely available for re-use or are in the public domain.

11 General Disclaimer

- 11.1 Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- 11.2 Subject to this clause 11, and to the extent permitted by law:
- (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms are excluded; and
 - (b) Test Engineering Alliance will not be liable for any injury, special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use

the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

11.3 Use of the Website, the Services, and any of the products of Test Engineering Alliance, is at your own risk. Everything on the Test Engineering Alliance, the Services, and the products of Test Engineering Alliance, are provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors, third party content providers or licensors of Test Engineering Alliance make any express or implied representation or warranty about its Content or any products or Services (including the products or services of Test Engineering Alliance) referred to on the Website. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:

- (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
- (b) the accuracy, suitability or currency of any information on the Website, the Service, or any of its Content related products (including third party material and advertisements on the Website);
- (c) costs incurred as a result of you using the Website, the Services or any of the products of Test Engineering Alliance;
- (d) the Content or operation in respect to links which are provided for your convenience;
- (e) any failure to complete a transaction, or any loss arising from e-commerce transacted on the Website; or
- (f) any defamatory, threatening, offensive or unlawful conduct of third parties or publication of any materials relating to or constituting such conduct.

12 Limitation of liability

12.1 Test Engineering Alliance's total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the most recent fee paid by you for the purchase of the ticket for the Services under these Terms or where you have not paid the fee, then the total liability of Test Engineering Alliance is \$100.00.

12.2 You expressly understand and agree that Test Engineering Alliance, its affiliates, employees, agents, contributors, third party content providers and licensors shall not be liable to you for any injury or direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether

incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

12.3 Test Engineering Alliance is not responsible or liable in any manner for any site content (including the Content and third party content) posted on the Website or in connection with the Services, whether posted or caused by members of Test Engineering Alliance, by third parties or by any of the Services offered by Test Engineering Alliance.

12.4 Test Engineering Alliance does not control and is not responsible for the behaviours and actions of the attendees and/or the presenters at the conferences, their comments, posts or information that they communicate or exhibit. Accordingly, Test Engineering Alliance is not responsible for any offensive, inappropriate, obscene or unlawful content you may encounter on the Website or in connection with any of the Services provided.

13 Indemnity

13.1 You agree to indemnify Test Engineering Alliance, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:

- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with any Content you post through the Website;
- (b) any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so and any breach by you or your agents of these Terms; and/or
- (c) any breach of the Terms.

14 Dispute resolution

14.1 Compulsory

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

14.2 Notice

A party to the Terms claiming a dispute ("**Dispute**") has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

14.3 Resolution

On receipt of that notice ("**Notice**") by that other party, the parties to the Terms ("**Parties**") must:

- (a) Within seven (7) days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (b) If for any reason whatsoever, twenty-one (21) days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Law Society of Victoria or his or her nominee;
- (c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- (d) The mediation will be held in Melbourne, Australia.

14.4 Confidential

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

14.5 Termination of Mediation

If thirty (30) days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

14.6 Legal Proceedings

In the event that the Dispute is not resolved at the conclusion of the mediation, either Party may institute legal proceedings concerning the subject matter of the Dispute thereafter.

15 Venue and Jurisdiction

The Services offered by Test Engineering Alliance are intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of Victoria, Australia.

16 Governing Law

This agreement is governed by the laws of Victoria, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to this agreement and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Victoria, Australia, without reference to conflict

of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. This agreement shall be binding to the benefit of the parties hereto and their successors and assigns.

17 Independent Legal Advice

Both Parties confirm and declare that the provisions of this agreement are fair and reasonable and both Parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

18 Severance

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.