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## **NFC GROUP PTY LTD**

# **WEBSITE TERMS AND CONDITIONS OF USE**

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## **TERMS AND CONDITIONS OF USE**

### **1 About the Website**

1. Thank you for visiting [www.rajesh-mathur.com](http://www.rajesh-mathur.com) (the "**Website**"), a website that provides users with an opportunity to connect, learn and discuss things related to the software testing industry and includes other associated services such as the offering of training courses and conferences related to the software testing industry (the "**Services**").
2. The Website is owned and operated by NFC Group Pty Ltd (ACN 607 938 689) trading as [www.rajesh-mathur.com](http://www.rajesh-mathur.com) (the "**www.rajesh-mathur.com**"). Access to and use of the Website, or any of its associated products, is provided by [www.rajesh-mathur.com](http://www.rajesh-mathur.com). Please read these terms and conditions (the "**Terms**") carefully. By using or browsing the Website, reading the content on the Website, 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.
3. [Rajesh-mathur.com](http://rajesh-mathur.com) reserves the right to review and change any of the Terms by updating this page at its sole discretion. When [Rajesh-mathur.com](http://rajesh-mathur.com) 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. Acceptance of the Terms**

- 2.1. You accept the Terms by remaining on the Website. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by [Rajesh-mathur.com](http://rajesh-mathur.com) in the user interface.

### **3. Using the Services**

- 3.1. You may purchase the Services from time to time. For instance, where you register for a training course or a conference, 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 and/or information you give to [Rajesh-mathur.com](http://rajesh-mathur.com) will always be accurate, correct and up to date.
- 3.3. You may not use the Services and may not accept the Terms if:
  - (a) you are not of legal age to form a binding contract with [Rajesh-mathur.com](http://rajesh-mathur.com); and/or
  - (b) you are a person barred from receiving 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 Services, you represent and warrant to Rajesh-mathur.com that:

- (a) you have reached the legal age in your jurisdiction;
- (b) you have the right, authority and capacity to agree to and abide by the Terms;
- (c) if you are purchasing 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 Rajesh-mathur.com policies.

#### **4. Copyright and Intellectual Property**

4.1. The Website, Services, and all of the related products of Rajesh-mathur.com 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 Rajesh-mathur.com or any of its third party suppliers such as trainers and keynote speakers (the "**Content**") are owned or controlled by Rajesh-mathur.com, and are reserved by Rajesh-mathur.com or its contributors.

4.2. Rajesh-mathur.com retains all rights, title and interest in and to the Website and all related content. Nothing you do on or in relation to the Website or the Services will transfer any:

- (a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
- (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.

4.3. You may not, without the prior written permission of Rajesh-mathur.com 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.

#### **5. General Disclaimer**

- 5.1. 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.
- 5.2. Subject to this clause 5, 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) Rajesh-mathur.com will not be liable for any 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.
- 5.3. Use of the Website, the Services, and any of the products of Rajesh-mathur.com, is at your own risk. Everything on the Rajesh-mathur.com, the Services, and the products of Rajesh-mathur.com, 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 Rajesh-mathur.com make any express or implied representation or warranty about its Content or any products or Services (including the products or services of Rajesh-mathur.com) 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 Rajesh-mathur.com;
  - (d) the Content or operation in respect to links which are provided for the Member's 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.

## **6. Limitation of liability**

- 6.1. Rajesh-mathur.com'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 Services under these Terms or where you have not paid the fee, then the total liability of Rajesh-mathur.com is the resupply of information to you.
- 6.2. You expressly understand and agree that Rajesh-mathur.com, its affiliates, employees, agents, contributors, third party content providers and licensors shall not be liable to you for any 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.
- 6.3. Rajesh-mathur.com is not responsible or liable in any manner for any site content (including the Content and third party supplied content) posted on the Website or in connection with the Services, whether posted or caused by Members of Rajesh-mathur.com, by third parties or by any of the Services offered by Rajesh-mathur.com.
- 6.4. Rajesh-mathur.com does not control and is not responsible for the behaviours and actions of its members, their comments, posts or information that they upload. Accordingly, Rajesh-mathur.com 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 on the Website.

## **7. Termination**

- 7.1. The Terms will continue to apply until terminated by either you or by Rajesh-mathur.com as set out below.
- 7.2. If you want to terminate the Terms, you may do so by:
  - (a) notifying Rajesh-mathur.com at any time; and
  - (b) closing your accounts for all of the Services which you use, where Rajesh-mathur.com has made this option available to you. Your notice should be sent, in writing, to Rajesh-mathur.com via the 'Contact Us' link on our homepage.
- 7.3. Rajesh-mathur.com may at any time, terminate the Terms with you if:
  - (a) you have breached any provision of the Terms or intend to breach any provision;
  - (b) Rajesh-mathur.com is required to do so by law;
  - (c) the partner with whom Rajesh-mathur.com offered the Services to you has terminated its relationship with Rajesh-mathur.com or ceased to offer the Services to you;

- (d) Rajesh-mathur.com is transitioning to no longer providing the services to Members in the country in which you are resident or from which you use the service; or
- (e) the provision of the services to you by Rajesh-mathur.com is, in the opinion of Rajesh-mathur.com, no longer commercially viable.

7.4. Subject to local applicable laws, Rajesh-mathur.com reserves the right to discontinue or cancel your membership at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts Rajesh-mathur.com's name or reputation or violates the rights of those of another party.

7.5. When the Terms come to an end, all of the legal rights, obligations and liabilities that you and Rajesh-mathur.com have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of this clause shall continue to apply to such rights, obligations and liabilities indefinitely.

## **8. Indemnity**

8.1. You agree to indemnify Rajesh-mathur.com, 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.

## **9. Dispute resolution**

9.1. 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).

9.2. 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.

9.3. 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.

#### 9.4. 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.

#### 9.5. 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.

#### 9.6. 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.

### **10. Venue and Jurisdiction**

The Services offered by Rajesh-mathur.com 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.

### **11. 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.

## **12. 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.

## **13. 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.