

ONLINE COACHING TERMS AND CONDITIONS

These Online Coaching Terms and Conditions (**Terms**) apply when you sign up for Coaching Services with Mercedes Whibley ABN 61 846 278 584 trading as Mercedes Mercier and The Writer Cheerleader (**Mercedes Mercier, The Writer Cheerleader, we, us, our**) through our website, being www.mercedesmercier.com (**Website**).

When we say the “**Coaching Services**” in these Terms, we mean our online coaching sessions and any additional services we may provide. We have also used a few other capitalised words and phrases as shorthand to refer to recurring concepts. Each of these are defined in bold and in brackets after the concepts are first mentioned.

Before you book in for any Coaching Services, please carefully read these Terms. If you do not agree to these Terms, please don't book in for any Coaching Services. By clicking “accept” when you create an account, or otherwise proceed to book in, or attend, any Coaching Services, you agree to be bound by these Terms.

To make it easier for you to understand the terms on which we provide the Coaching Services, we have tried to keep these Terms as simple as possible by using plain English.

1 USING THE COACHING SERVICES

- (a) To use the Coaching Services, you will need to create an account (**Account**), book in for a Session (as defined in clause 2(a) and pay the applicable Fees (as defined in clause 3(a)).
- (b) The Coaching Services are available only to, and may only be used by, persons who can form legally binding contracts under the law. If you do not qualify, please do not use the Coaching Services. If you are under the age of 18, we require parental/guardian consent, and by agreeing to these Terms, you represent and warrant that prior to accepting a parent/ legal guardian has also agreed to these Terms on your behalf (and will be the owner of the Account).
- (c) By creating an Account and using the Coaching Services you represent and warrant that:
 - (i) you have the legal capacity and are of sufficient age to enter into a binding contract with us (or someone of sufficient age and capacity is contracting on your behalf as your parent or guardian); and
 - (ii) you are authorised to use the debit or credit card you provide for payment of the applicable Fees.
- (d) You must not give any other person access to your Account.

2 THE PROCESS

- (a) The details of the Coaching Services will be as set out on our Website or otherwise communicated to you. If you decide to the Coaching Services, you must make payment of the applicable Fees and book in for an online Coaching session by following the prompts on the Website (**Session**). The length of the Session is specified at the time of booking.
- (b) At the time of creating an Account and booking in for a Session you will also be asked to provide some information which will help us provide the Coaching Services to you, such as what you would like help with, contact email and any additional information. You must provide us with all information and assistance reasonably required for us to perform the Coaching Services.
- (c) Each session is hosted online, and you are required to download and create an account as required for the software. We currently use Zoom, but we will let you know before the Session if that changes.

3 PAYMENT

- (a) **(Fees)** The fees for the Coaching Services are as displayed on the Website and accepted by you at the time of checkout (**Fees**). All Fees will be in Australian Dollars.
- (b) **(Payment obligations)** You must pay the Fees in full at the time you purchase any Coaching Services and full payment is required upfront prior to any Sessions.
- (c) **(GST)** Unless otherwise indicated, amounts stated on the Website include GST. In relation to any GST payable for a taxable supply by us, you must pay the GST subject to us providing a tax invoice to you.
- (d) **(Card surcharges)** We reserve the right to charge credit card surcharges in the event that payment of the Fees is made using a credit, debit or charge card (including Visa, MasterCard or American Express).
- (e) **(Online payment partner)** We may use third-party payment providers (**Payment Providers**) to collect payment of the Fees. The processing of payments by the Payment Provider will be, in addition to these terms, subject to the terms, conditions and privacy policies of the Payment Provider and we are not liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting the Fees.
- (f) **(Pricing errors)** In the event that we discover an error or inaccuracy in the Fees, we will attempt to contact you and inform you of this as soon as possible. You will then have the option of purchasing the Coaching Services at the correct Fees or cancelling the Coaching Services. If you choose to cancel the Coaching Services and the Fees have already been debited, the full amount will be credited back to your original method of payment.

4 ATTENDING THE SESSION

- (a) The Coaching Services will take place at the time of the Session booked on the Website and you agree to attend the Session at such time.
- (b) It is requested that you connect to the Session at least five minutes prior to the starting time so that you are able to sort out any technical issues and be ready in attendance by the start time. Any technical issues regarding your computer (or other devices), software, or internet service are not our responsibility.
- (c) We may offer individual and/or group Sessions. If you are attending a group Session, you agree that, given it will be a group environment, we may not be able to respond to all questions asked by each participant in a Session. If you require one-on-one support, we advise you to book in for an individual Session.
- (d) In attending a Session, you must:
 - (i) attend on time and for the entire Session;
 - (ii) use best efforts to give your full attention and refrain from multi-tasking during the Session;
 - (iii) keep us informed of any medical, health or personal circumstances that may interfere with the Session;
 - (iv) be respectful to us and any other attendees;
 - (v) ensure you are able to attend the Session in a quiet place with minimal interruptions;
 - (vi) ensure you have access to a reliable internet connection and in the event your internet connection is temporarily lost, make every effort to reconnect promptly; and
 - (vii) ensure you do not communicate with or distract other attendees.
- (e) In the event you:
 - (i) show up late to a Session;
 - (ii) have poor internet connection; or

(iii) are interrupted during the Session,

the Session will commence at the scheduled time and continue until the Session was scheduled to end. Although this may result in the Session being shorter, this will be deemed a full Session and charged as so, and you will not be entitled to any additional time or any refund.

- (f) In the event you are deemed disruptive, offensive, or unfit for Coaching Services you attend, we reserve the right to remove you from the Session and you will not be entitled to any additional time or any refund.

5 CANCELLATION AND RESCHEDULING POLICY

- (a) Once a Session has been purchased and confirmed, the Session may not be cancelled, rescheduled or varied except in accordance with the terms of this clause, or to the extent otherwise required by law.
- (b) No cancellations or rescheduling of Sessions will be permitted, provided however, we will consider requests to cancel or reschedule your Session if you provide us with more than 48 hours' notice and if we, at our sole discretion, believe that there are exceptional circumstances.
- (c) We will use our best efforts to attend the Session at the scheduled time, however, from time to time unforeseen events may occur which may cause us to cancel or reschedule a Session. If we cancel a Session, we will issue you with a full refund for that Session.
- (d) In the event there is an interruption to the Session caused by us, such as lost internet connection, we will make every effort to minimise the interruption and we will make up for any lost time at the end of the scheduled Session or at a later date as mutually agreed.

6 DISCLAIMER

- (a) While we will use every effort to ensure that the Coaching Services will help you achieve your writing goals, we cannot and do not make any guarantees that using the Coaching Services will improve your writing performance or likelihood of being published, traditionally or otherwise.
- (b) You acknowledge and understand that because of the nature of the Coaching Services, the results experienced by each writer will significantly vary and will depend on your own actions and efforts.
- (c) We will provide support, guidance and tools to assist you to achieve your writing goals, but any decisions you make and any consequences that flow from those decisions are your sole responsibility.

7 COLLECTION NOTICE AND PRIVACY

- (a) We may collect personal information about you in the course of providing you with the Coaching Services, to contact and communicate with you, to respond to your enquiries and for other purposes as set out in our Privacy Policy.
- (b) You can access our Privacy Policy from the footer of our website (www.mercedesmercier.com)
- (c) Our Privacy Policy contains more information about how we use, disclose and store your information and details how you can access and correct your personal information.
- (d) By agreeing to these Terms, you agree to be bound by our Privacy Policy.

8 CONFIDENTIAL INFORMATION

We respect your Confidential Information and by using the Coaching Services, you agree to respect ours.

You agree:

- (a) that any Confidential Information shared by us or any of our representatives is confidential and proprietary and belongs solely and exclusively to us;

- (b) not to disclose such information to any other person without our prior written consent or as required by law;
- (c) that all materials and information provided to you by us are our confidential and proprietary information and intellectual property, belong solely and exclusively to us, and may only be used by you as authorised by us;
- (d) that if you violate, or threaten to violate, any of your agreements contained in this paragraph we will be entitled to, among other things, injunctive relief to prohibit such violations.

While you are free to discuss your personal results from the Coaching Services, you must refrain from making disparaging and/or damaging comments as to the service we provide at any time, including online and via social media. Our commitment to you is that if you do have an issue or complaint, we will listen to what you have to say to us and act reasonably in addressing any concerns you may have. If you elect not to avail yourself of this offer of direct dispute resolution, then we reserve the right to deny you further access to further Sessions.

For the purpose of this clause, “**Confidential Information**” means information of, or provided by, a party that is by its nature confidential information, is designated as confidential, or that the recipient of the information knows or ought to know is confidential (including all commercial information exchanged between the parties), but does not include information which is, or becomes, without a breach of confidentiality, public knowledge.

9 INTELLECTUAL PROPERTY

9.1 OUR IP

Intellectual Property Rights in the Coaching Services and any other related information or materials (**Materials**) are owned or licensed by us. Except as permitted under applicable laws, no part of the Materials can be reproduced, adapted, distributed, displayed, transmitted or otherwise exploited for any commercial purposes without our express written consent. You will not under these Terms acquire Intellectual Property Rights in any of Our IP.

9.2 DEFINITIONS

For the purposes of this clause 9:

- (a) “**Our IP**” means all Materials owned or licensed by us and any Intellectual Property Rights attaching to those Materials.
- (b) “**Intellectual Property Rights**” means any and all present and future intellectual and industrial property rights throughout the world (whether registered or unregistered), including copyright, trade marks, designs, patents, moral rights, semiconductor and circuit layout rights, trade, business, company and domain names, and other proprietary rights, trade secrets, know-how, technical data, confidential information and the right to have information kept confidential, or any rights to registration of such rights (including renewal), whether created before or after the date of these Terms.

10 RECORDINGS OF SESSIONS

- (a) You acknowledge and agree that we may record the Sessions and you consent to such recordings. Although we may not record every Session, the purpose of recording Sessions is for us to have a record of Sessions in the event any future issues arise. We will not disclose the recordings to any third party unless required by law.
- (b) We will provide you with a copy of any available recordings upon your reasonable request if we, in our absolute discretion, consider it for a proper purpose.
- (c) You are not permitted to record any Sessions without our written consent to do so.

11 THIRD PARTY GOODS AND SERVICES

- (a) The Coaching Services may utilise services provided third parties such as Zoom and Microsoft Teams and is therefore subject to the terms and conditions of those third parties. Your use of the Coaching Services is subject to any applicable third party terms

and conditions and you agree to familiarise yourself with all applicable third party terms and conditions.

- (b) To the maximum extent permitted under applicable law and our agreements with any applicable third parties, we will not be liable for any acts or omissions of those third parties, including in relation to any issues experienced in the Coaching Services.

12 SECURITY

We do not accept responsibility for loss or damage to computer systems, mobile phones or other electronic devices arising in connection with use of the Coaching Services. You should take your own precautions to ensure that the process that you employ for accessing the Coaching Services does not expose you to risk of viruses, malicious computer code or other forms of interference.

13 SUBCONTRACTING

We may subcontract any aspect of providing the Coaching Services and you consent to such subcontracting.

14 DISPUTE RESOLUTION

Other than a claim for interlocutory relief, the parties must, without delay and in good faith, first attempt to resolve any dispute which arises out of or in connection with these Terms prior to commencing any legal proceedings.

15 NOTICES

A notice or other communication to a party under these Terms must be delivered via email to the other party to the email address communicated to the other party at the time of entering into these Terms. The parties may update their email address by notice to the other party.

16 LIABILITY

- (a) To the maximum extent permitted by applicable law, we limit all liability to any person for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to the Coaching Services, these Terms or any other goods or services provided by us to the value of the Fees paid for the Coaching Services.
- (b) All express or implied representations and warranties in relation to the Coaching Services, these Terms or any other goods or services provided by us are, to the maximum extent permitted by applicable law, excluded.
- (c) Nothing in these Terms is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, you may be entitled to certain remedies (like a refund) if there is a failure with the goods or services we provide.
- (d) You indemnify us and our employees and agents in respect of all liability for loss, damage or injury which is or may be suffered by any person arising from your or your representatives':
 - (i) breach of any of these Terms;
 - (ii) use of the Coaching Services; or
 - (iii) use of any other goods or services provided by us.
- (e) To the maximum extent permitted by law, under no circumstances will we be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with the Coaching Services, these Terms or any other goods or services provided by us (except to the extent this liability cannot be excluded under the ACL).

17 TERMINATION

17.1 TERMINATION FOR CAUSE

Either party may immediately terminate these Terms by written notice to the other party if:

- (a) the other party is in default or breach of these terms;
- (b) the other party is convicted, or any of the other party's personnel are convicted, of a criminal offence involving fraud or dishonesty or an offence which, in the opinion of the other party, affects the other party's obligations under these terms;
- (c) the other party or any of the other party's personnel conducts themselves in a way tending to bring them or the other party into disrepute; or
- (d) the other party or any of the other party's personnel has a conflict of interest that cannot be resolved to the satisfaction of the other party.

17.2 EFFECT OF TERMINATION

Upon termination of these terms:

- (a) your Account will be terminated;
- (b) any Fees paid are non-refundable (except in accordance with clause 5); and
- (c) you must immediately deliver to us all property belonging to us and materials comprising or containing any of Our IP (as defined in clause 9.2(a)) which is in your care, custody or control, and you must thereafter destroy any copies you have of such materials.

17.3 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of these Terms will survive and be enforceable after such termination or expiry.

18 GENERAL

18.1 GOVERNING LAW AND JURISDICTION

These Terms are governed by the law applying in South Australia, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of South Australia, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with these terms. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

18.2 WAIVER

No party to these Terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

18.3 SEVERANCE

Any of these Terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of these Terms is not limited or otherwise affected.

18.4 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

18.5 ASSIGNMENT

You cannot assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party. We can assign the rights or novate these Terms in whole or part without your consent, on notice which may be communicated electronically on the website or by email.

18.6 COSTS

Except as otherwise provided in these terms, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing these terms.

18.7 ENTIRE AGREEMENT

These Terms embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of these terms.

18.8 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(these terms)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of these terms, and a reference to these Terms includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including these terms) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word "includes" and similar words in any form is not a word of limitation; and
- (j) **(adverse interpretation)** no provision of these Terms will be interpreted adversely to a party because that party was responsible for the preparation of these Terms or that provision.