



# Terms of Sale

April 2018 | Version 1.0

## 1. Introduction

These terms are the general terms of the relationship between us and you. The terms cover any transactions where we provide goods to you. The commercial terms of any transaction will be contained in an order that will incorporate these terms. The order will prevail if there is a conflict of meaning. Nothing in the terms obligates any party to enter into any orders.

## 2. Definitions and interpretation

### 2.1. Definitions

In the agreement:

**additional fee** means a charge you must pay us for the provision of any goods outside of an order, which charge must be made at our then current standard prices and rates, unless otherwise agreed in writing between the parties;

**AFSA** means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead);

**agreement** means the agreement between us and you, consisting of the terms and any orders the parties enter into;

**business day** means any day other than a Saturday, a Sunday, or a holiday (including a public or bank holiday) in the jurisdiction where our entity that entered into the relevant order is organised;

**business hours** means our normal business hours on business days;

**calendar day** means a day counted from midnight to midnight. It includes all days of the month, including weekends (Saturday and Sunday), and public holidays;

**contract year** means, in respect of an order, each successive 12 calendar month period during the term of the order, calculated from the effective date;

**credentials** means a unique username and password that has been assigned to an authorised user;

**effective date** means in respect of each order, the effective date stipulated in each order, in the absence of which it will be the date the order is accepted by us;

**fees** means the fees, charges, or purchase consideration that you will pay to us in respect of goods we provide under orders;

**goods** means any goods that we supply to you;

**our technology** means any technology that we have created, acquired or otherwise have rights in and may, in connection with the performance of our obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any:

- concepts or ideas;
- methods or methodologies;
- procedures or processes;
- know-how or techniques;
- function, process, system, data, or object models;
- templates;
- the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs;
- general purpose consulting and software tools, utilities, routines or frameworks;
- logic, coherence and methods of operation of systems; and
- patches or enhancements to open source libraries;

**personnel** means any representative, including any director, employee, agent, affiliate, consultant, or contractor;

**related and related persons** means natural and juristic persons who are connected to one another in the manner contemplated in sections 2 and 3 of the Companies Act 71 of 2008;

**sign** means the handwritten signature, an advanced electronic signature, or an electronic signature that the parties agree to use, of each of our duly authorised representatives;

**tax** means any:

- tax (including value added tax, income taxes, pay-as-you-earn tax, or other taxes levied in any jurisdiction);
- duty (including stamp duty);
- tariff, rate, levy; or
- any other governmental charge or expense payable;

**terms** means the terms, consisting of:

- these terms; and
- any other relevant specific terms, policies, disclaimers, rules and notices that the parties agree on, (including any that may be applicable to any specific goods);

**third party contractor** means any contractor, supplier, vendor, or licensor of a part of the goods, which is not a party to the agreement;

**we, us, or our** means our organisation, the vendor that enters into an order and, if specified in the order, those related to it;

**writing** means the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf), but excludes information or data in the form of email;

**you or your** means the customer that enters into an order and, if specified in the order, those related to it;

**your data** means your data (including information about an identifiable person) that:

- you provide (or any third party on your behalf provides) to us; or
- we generate, process, or supply to you in providing the goods; but excludes any derived data that we create for our own internal purposes or which is proprietary or confidential to us or our third party contractors, or which belongs to third parties

## **2.2. Definitions in the order**

Words defined (or assigned a meaning) in an order will have that meaning in the terms, unless the context clearly indicates otherwise.

## **2.3. Interpretation**

All headings are inserted for reference purposes only and must not affect the interpretation of the agreement. Whenever “including” or “include”, or “excluding” or “exclude”, together with specific examples or items follow a term, they will not limit its ambit. Terms other than those defined within the agreement will be given their plain English meaning. References to any enactment will be deemed to include references to the enactment as re-enacted, amended, or extended. A reference to a person includes a natural and juristic person and a reference to a party includes the party's successors or permitted assigns. Unless otherwise stated in the agreement, when any number of days is prescribed in the agreement the first day will be excluded and the last day included. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.

## **3. Duration**

The terms commence on acceptance and continue until terminated.

## **4. Orders**

### **4.1. Capacity**

You represent and warrant that you (and any person who places an order):

- are old enough under applicable law to enter into the agreement;
- are legally capable of concluding any transaction;
- possess the legal right, full power, and authority to enter into the agreement;
- are authorised to use the credentials required for any account; and
- will submit true, accurate and correct information to us. If you are younger than 18 years of age, you warrant that you have the consent of your legal guardian to enter into the agreement or that you have obtained legal status in another manner.

### **4.2. Invitation to do business**

The marketing of the goods by us is merely an invitation to do business or for you to make an offer to procure goods. The parties only conclude a valid and binding order when we accept the offer made by you. Unless otherwise agreed in writing or we accept an offer earlier, we only accept an offer relating to goods, when we dispatch the goods. If we only ship part of the goods relating to an offer, we only accept that portion of the offer. We may accept or reject any offer. If we do not accept any offer, then we will refund any monies already paid by you.

### **4.3. Cancel**

Unless otherwise agreed, we may cancel any order at any time in our absolute discretion. We will refund any monies already paid by you if we do.

### **4.4. Fees**

Despite our best efforts, the stated fees may be incorrect. We will confirm the fees for any goods when we accept your offer.

### **4.5. Time and place**

The parties conclude any agreement between each other at the time when our duly authorised representative accepts the relevant offer and at the place where you have your head office. We do not need to communicate the acceptance of the offer to you.

#### **4.6. Orders**

The terms in effect at the time you make an offer will govern the order. Each order will create a separate agreement.

### **5. Goods**

#### **5.1. Sale**

We sell the goods to you who purchases them on the terms of the agreement.

#### **5.2. Delivery**

Unless otherwise agreed in an order the goods will be supplied on the following basis:

- once you have registered and purchased the goods you will be given access to the learning library;
  - access will allow you to view the learning materials;
- and
- access will depend on your specific purchase.

#### **5.3. Time until dispatch**

Once payment has been made, access to the goods is immediate. If someone has made the payment on your behalf, you will have to wait for them to send you an invitation to access the goods. You may not withdraw any offer due to a delay in delivery.

#### **5.4. Risk**

All risk will pass to you upon you gaining access to the goods.

#### **5.5. Warranty**

The goods will be subject to any warranty indicated in the description of the goods appearing on the accompanying documentation . Please review those documents carefully. You will have the same rights against us as we have against the supplier regards defects in the goods, the intention being that our liability to you will be co-extensive with the right of recourse we have against the supplier. We will provide a copy of any warranty on request. To the extent legally possible, we assign to you the benefit of any supplier warranties that a supplier may give to us regards the goods. You may not waive any of our common law rights as against the supplier.

#### **5.6. Licence**

We own all copyright and any other intellectual property rights in our software. Our software belongs to us and not to you. If you agree to the terms of this agreement, then we grant you this license to use our software subject to the licence conditions set out below. You will then have the right to use the software subject to the conditions. But, you may not use our software as if you own any rights in it. We do not grant you any licence to use our software if you do not agree to the terms of this agreement.

Your right to use our software:

- is non-exclusive. We may give anyone else the same or any other right to use our software.
- is non-assignable. You may not transfer the right to anyone else.
- is only for the duration of this agreement. You may not use the software before or after the duration of this agreement.
- depends on payment of the licence fees related to that licence. You will not have the right to use our software if the customer responsible for paying the associated licence fees (who may or may not be you) has not paid them.

You will be in breach of the license to use our software if you use it contrary to the conditions set out above.

## **6. Intellectual property**

### **6.1. Our intellectual property**

The videos are our intellectual property. You may not copy any of our intellectual property in any way. Prohibited methods of copying include, but are not limited to, downloading, screenshots, photography or recording. Any form of duplication will be considered a violation of our proprietary rights.

### **6.2. Your data**

You own all your data. We do not own your data or other third party content used as part of the website. All title, ownership rights and intellectual property rights in and to the content submitted through the website belong to you or the applicable content owner and may be protected by applicable copyright or other law.

### **6.3. Your data license**

When you upload your data to the website, you give us a worldwide license to use, host and store your data, solely for purposes of providing the services.

### **6.4. Retention of rights**

We have created, acquired or otherwise obtained rights in our technology and despite anything contained in the agreement, we will own all right, title, and interest in our technology.

### **6.5. Use of our technology**

If we utilise any of our technology in connection with our performance under an order, our technology will remain our property and you will not acquire any right or interest in it.

### **6.6. Trade marks**

Our logo and sub-logos, marks, and trade names are our trade marks and no person may use them without permission. Any other trademark or trade name that may appear on our marketing material is the property of its respective owner.

### **6.7. Restrictions**

Except as expressly permitted under the agreement, the goods may not be: - reverse engineered or copied; or - reproduced or distributed.

### **6.8. Prosecution**

All violations of proprietary rights or the agreement will be prosecuted to the fullest extent permissible under applicable law.

## **7. Our warranties**

We warrant that:

- we have the legal right and full power and authority to execute and deliver, and to exercise our rights and perform our obligations under the agreement; and
- we and our personnel will not knowingly introduce any malicious software into your material or your system.

## **8. Disclaimer of warranties**

### **8.1. Disclaimer**

You use our goods at your sole responsibility and risk. We provide the goods on an “as is” and “as available” basis. Except for the warranties given in this agreement and to the extent allowed by law, we expressly disclaim all representations, warranties, or conditions of any kind, whether express or implied, including any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement.

## **8.2. Exclusion of liability**

Despite any warranty we give, we will not be liable regards any defect arising from negligence, failure to follow our instructions (whether oral or in writing) or misuse.

## **9. Your warranties**

You warrant that:

- **you have not been induced to enter into the agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the agreement;**
- **by entering into an order you are not acting in breach of any agreement to which you are a party;**

**and you agree to indemnify, defend, and hold us harmless (and those related to us and our personnel, co-branders or other partners) from and against any claim for damages by any third party as a result of the breach of these warranties, including all legal costs. If permissible under applicable law, legal costs will be on an attorney and own client basis.**

## **10. Fees and payment**

### **10.1. Due dates**

You will be liable for and pay the fees specified in the order and any additional fees promptly on the due date, without any deduction, set off, or demand and free of exchange in the currency specified in the order.

### **10.2. Manner of payment**

You must make payment in the manner specified in South African Rands (ZAR).

### **10.3. Tax**

All fees include VAT.

## **11. Limitation of liability**

### **11.1. Direct damages limited**

**To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, our maximum liability to you for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by you to us for the goods related to the claim. The aggregate amounts for all claims will not be greater than the maximum amount.**

### **11.2. Indirect damages excluded**

To the extent permitted by applicable law, in no event will we (or our personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from the agreement.

### **11.3. Exclusions**

The limitation contained in this clause will not apply to any breach by a party of the other party's proprietary or confidential information or intellectual property or damages arising from a party's gross negligence.

### **11.4. We are not liable for your default**

We will not be liable for any loss or damage suffered by you arising out of or in connection with any breach of the agreement by you or any act, misrepresentation, error or omission made by or on behalf of you or your personnel.

### **11.5. Other goods or services**

We are not liable for any other deliverable, including website, goods, or service provided by any third party.

### **11.6. Indemnity**

We agree to indemnify, defend, and hold you (and your personnel) harmless against any and all:

- loss of or damage to any property or injury to or death of any person; and
- loss, damage (including attorneys' fees on an attorney and own client basis), costs and expenses that you may suffer or incur arising directly or indirectly from: (i) any wilful misconduct or fraud by us or our personnel; or (ii) a breach by us of your proprietary or confidential information, or intellectual property.

### **11.7. Liability**

Without limiting liability, neither party will be liable to the other for any loss that it may suffer as a result of theft, fraud, or other criminal act by a party or its personnel.

## **12. Breach**

If a party:

- does not fix any breach of this agreement (failure to comply with it) within seven days of receiving written notice from the other party to do so;
- breaches this agreement materially twice or more in any six month period;
- is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
- takes steps to deregister itself (close down) or is deregistered;
- makes any settlement or arrangement with its creditors; or
- fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand, within 21 days;

Then the other party may, without prejudice to any of its rights:

- claim specific performance of this agreement (make the party comply with this agreement); or
- immediately cancel this agreement in writing; and
- claim damages from the other party, including any claim for any fees already due.

## **13. Termination**

### **13.1. Termination for good cause**

We may immediately terminate this agreement at any time by giving you notice in writing if:

- we discontinue the goods;
- we believe providing the goods could create an economic or technical burden or material security risk for us;
- termination is necessitated by us having to comply with any applicable law or requests of governmental entities; or
- we determine that the provision of any goods to you has become impractical or unfeasible for any legal or regulatory reason.

### **13.2. Duties on termination**

On termination, cancellation, or expiry of this agreement:

- we will stop providing the goods;
- your access rights will cease to exist; and
- we will erase your data, unless we have agreed to provide you with post termination assistance in writing.

### **13.3. Survival**

The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

## **14. Effect of termination**

### **14.1. Amounts due to us become due and payable**

On termination, cancellation, or expiry this agreement, all amounts due to us for goods delivered before termination will become due and payable even if we have not yet invoiced them. You may not withhold the amounts for any reason, unless the arbitrator directs otherwise.

### **14.2. Post termination assistance**

Following termination, you may take advantage of any post-termination assistance that we may generally make available (such as data retrieval arrangements). We may provide you with post-termination assistance, but we will not be under an obligation to do so. Your right to take advantage of any post termination assistance will depend on your acceptance of and compliance with any additional fees and terms that we may impose for such assistance.

### **14.3. No expectation**

We acknowledge and confirm that no expectation has been created by anyone, by the agreement or any other agreement, entitling us or you to expect:

- the renewal or extension of the term of any agreement; or
- the conclusion of any further agreement between you and us or our personnel.

### **14.4. Survival**

The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

## **15. Resolving disputes**

### **15.1. Notifying each other**

There will be a dispute about or from this agreement if a party writes to the other about it and asks for it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- negotiation (direct talks to try and agree how to end the dispute); failing which
- mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
- arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

### **15.2. Negotiation**

Each party must make sure that their chosen representatives meet within 10 business days of notification, to negotiate and try to end the dispute by written agreement within 15 more business days.

### **15.3. Mediation**

If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules.

### **15.4. Arbitration**

If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Johannesburg, Cape Town, or Durban (whichever city is closest to our head office at the time). The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

### **15.5. Agree otherwise in an order**

The parties may agree otherwise in an order.

**15.6. Periods**

The parties may agree in writing to change the periods for negotiation or mediation.

**15.7. Urgent interim relief**

This clause will not stop a party from applying to court for urgent interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict (type of court order).

**15.8. Severability**

This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

**16. Notices and domicile**

**16.1. Notices**

The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in the relevant order.

**16.2. Service (delivery) address for legal documents**

Each party chooses its street addresses and numbers as its domicilium citandi et executandi (its address for the service of any document used in legal action) for this agreement.

**16.3. Change of addresses or numbers**

Each party may change the addresses or numbers in the specific terms to any other addresses or numbers by writing to the other party 14 days before the change.

**16.4. Deemed delivery**

Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.

**16.5. Notice actually received**

If a party actually receives any notice or other communication, this will be good enough.

**17. Force majeure**

**17.1. Parties not liable**

No party will be responsible for any breach of this agreement caused by circumstances beyond its control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, or acts of God.

**17.2. Party affected to notify other party**

If there is an event of force majeure, the party affected will tell the other immediately, and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.

**17.3. Right to cancel**

If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 60 days because of force majeure, the other party may cancel this agreement by written notice.

**18. Assignment and subcontracting**

**18.1. No assignment**

No party may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part. We may assign this agreement to any successor or purchaser of our business or some of our assets.

## **18.2. Exception**

Despite this clause, we may cede and assign all rights and obligations under this agreement to a related person without your prior written consent, provided that we notify you within a reasonable time of the event occurring.

## **18.3. Our third party contractors**

We may sub-contract or delegate our obligations under this agreement to third party contractors. We will remain liable for performance of the third party contractors. No one may require us to disclose the terms (including payment terms) of any sub-contract entered into with respect to our obligations under this agreement.

## **19. Relationship**

### **19.1. No temporary employment service or partnership**

Nothing in this agreement will be construed as constituting a temporary employment service or as creating a partnership between the parties and no party will have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.

### **19.2. No employment relationship**

Each party enters into the agreement as an independent contractor. The agreement does not create any other relationship, including employment for any purpose, partnership, agency, trust or joint venture relationship.

## **20. General**

### **20.1. Entire agreement**

We may have discussions with each other relating to this agreement, but the agreement is the entire agreement between the parties on the subject. It does not include anything outside of the agreement.

### **20.2. Changes**

We may change the terms at any time and where this affects your rights and obligations, we will notify you of any changes by placing a notice in a prominent place on our website or by email. If you do not agree with the change you must stop using the services. If you continue to use the services following notification of a change to the terms, the changed terms will apply to you and you will be deemed to have accepted such terms.

### **20.3. Waiver (giving up of rights)**

Any favour we may allow you will not affect or substitute any of our rights against you.

### **20.4. Severability**

If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.

### **20.5. Governing law**

South African law governs this agreement.

### **20.6. Jurisdiction**

You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.

### **20.7. Non-exclusivity**

We may provide any goods or services to any other person or entity. We may exploit our intellectual property subject to our confidentiality obligations.

**20.8. Costs**

Each party is responsible for its own costs of drafting and negotiating this agreement.

**20.9. Publicity**

A party will not make any announcement or statement to the press about this agreement, without first getting written permission from the other party.