



## GENERAL TERMS & CONDITIONS AND TERMS OF TRADE

### GENERAL

1. These terms of trade are incorporated into all contracts for the supply of goods and services (“goods and services”) to the subscriber (as defined on the 3P Learning Contract or other order form) by 3P Learning Limited trading as 3P Learning (“3P Learning”, “us”, “our”, “we”) and they supersede any previous issued terms of trade.
2. Goods and services supplied may differ in non-material respects from those advertised by us.

### PRICE

3. Subject to paragraphs 4 and 5 below, the price payable for goods and services shall be the total price specified in our price payment plan (“PPP”) plus the applicable cost of packaging, postage and delivery (“delivery charges”) exclusive of goods and services tax (“GST”). Prices and delivery charges are subject to change without notice.
4. The subscriber must let us know as soon as practicable if the number of students increases and the price payable may be adjusted to cover the price of additional students.
5. All prices are exclusive of GST, freight and handling (unless otherwise stated).

### VARIATION, BREACH AND TERMINATION

6. We may change the subscriber’s agreement from time to time upon notice to the customer. Changes detrimental to the subscriber take effect upon the next renewal. All other changes take effect within seven days of notice to the subscriber
7. The subscriber may terminate their agreement immediately upon notice to us if the abovementioned changes are unacceptable. Continued use of the goods and services by the subscriber following any change constitutes acceptance of the change.
8. The subscriber may terminate this agreement for goods and services (in whole or part) by giving us at least 30 days written notice to expire the day before the anniversary of the commencement date or PPP (whichever is the longer).
9. On termination of the agreement the subscriber shall pay us in accordance with the following formula:

$$X - (V \div W) \times Y = Z$$

where

X is the 3P Learning one year price at the time of the date of this contract

V is the contract price (based on the total number of students at the end of the previous school year)

W is the number of years the subscriber subscribed for the services

Y is the number of years from the time the contract commenced to the time the contract terminated

Z is the penalty amount payable by the subscriber to 3P Learning

10. We may suspend or discontinue providing the goods and services to the subscriber without notice and pursue any other remedy legally available to us if the subscriber fails to comply with any of its obligations hereunder. If the subscriber fails to pay all amounts due by the due date we may without limitation:

- (a) withhold support;
- (b) withhold further supplies including goods and services which have already been fully paid; and/or
- (c) charge interest on amounts outstanding at the rate of 4% above our bank base rate from time to time.

## **CREDIT**

- 11. By submitting the application the subscriber authorises us to carry out any credit checks with third parties as we may require. The subscriber authorises us to make any enquiries into, use, exchange or disclose any information which is disclosed in the application or is obtained by us from any third party from or to any other credit provider or credit reporting agency:
  - (a) concerning the subscriber 's credit worthiness; and
  - (b) for the purposes of providing or obtaining a reference.
- 12. We may impose credit limits which may be varied by us from time to time. If the subscriber exceeds the credit limit then goods and services will be withheld until the account is back within the credit limit.
- 13. The subscriber must pay the amount specified in an invoice in full within 30 days of the date of invoice (unless we agree otherwise in writing).
- 14. If the subscriber does not pay us the invoiced amount in full within the time stipulated in the invoice we may submit your account to a collection agency. If we do the subscriber agrees that we may recover the outstanding amount specified in the invoice including interest, our legal costs, bank fees and charges, and other expenses incurred in attempting to recover the debt and any fees and commissions or other amounts we pay to any collection agency to act on our behalf.
- 15. Where we make individual deliveries of goods and services or deliveries in instalments the subscriber may be invoiced separately for each delivery in which case the subscriber agrees to pay each invoice according to its terms.
- 16. We reserve the right to charge the subscriber a surcharge for payments made by credit card. We reserve the right to make changes to this surcharge from time to time or extend the surcharge to other methods of payment. If we make any changes we will notify the subscriber in writing before the changes take effect. Any such changes will take effect in accordance with the provisions of paragraph 6.

## **DELIVERY**

- 17. Orders for printed products are accepted by us subject to availability of stock and may be delivered in two or more instalments. 3P Learning has no liability for any loss to the subscriber as a result of delay in delivery or delivery of incorrect or faulty goods.
- 18. Delivery will be made to the address recorded in the subscriber contract or to a carrier designated by the subscriber or to other such addresses as are notified to us from time to time.
- 19. Risk in goods and services passes to the customer on delivery under paragraph 18. Title to goods and services will pass to the subscriber on payment in full.
- 20. Time is not of the essence for delivery of goods and services and our liability for incorrect delivery or failure to delivery is limited to the replacement of goods and services.

## **LOSS OR DAMAGE IN TRANSIT**

- 21. Claims for damage or partial delivery or complete loss of consignment must be notified to us within 30 days of the date of invoice.

### **3P LEARNING LIABILITY**

22. Our liability to the customer for negligence, breach of contract and statutory duty is limited to the cost of replacing the goods and services ordered. It is not intended that any contract between us and the subscriber for the supply of goods and services should be enforceable by any third party.
23. Any waiver by us of any of these terms and conditions shall be limited to the particular instance and shall not operate or be deemed to operate as a future waiver of that or any other term.

### **NOTICES**

24. Notices sent by the subscriber must be sent by pre-paid post to 3P Learning customer service department. Such notices must state the subscriber's name and (where applicable) account number.
25. Except as otherwise provided herein all notices and other communications to you hereunder shall be in writing or displayed electronically in the on-line services by us. Notices to you shall be deemed to have been properly given on the date posted if posted; on the date first made available, if displayed in the on-line services; or on the date received, if delivery is in any other manner.
26. Any change to the subscriber's details including name, invoice delivery and site address must be notified to us in writing within 30 days of the date of change.

### **UNFORESEEN EVENTS**

27. We may cancel or suspend delivery of any ordered product in the event of any delay or non-performance due directly or indirectly to wars, terrorism, strikes, lock-outs, delays or defaults of manufacturers or suppliers, act of God or any other cause beyond our reasonable control.

### **LICENCE RESTRICTIONS ON USE**

28. The subscriber is granted a non-exclusive non-transferrable limited licence to access and use the on-line services and materials from time to time made available to you for the internal purposes only of:
  - (a) research or study; and
  - (b) providing academic services to students.
29. This licence is subject to the following limitations:
  - (a) the right to electronically display materials retrieved from the on-line services is limited to the display of such materials primarily to the students and teachers of the subscriber;
  - (b) the right to obtain a print-out of materials is limited to a print-out of a reasonable portion of the materials obtained using the printing commands of the on-line services or your web-browser software and the creation of a single print-out of a reasonable portion of the materials down-loaded via down-loading commands of the on-line services or your web-browser software (collectively "authorised print-outs");
  - (c) to the extent expressly permitted by applicable copyright law you may make copies of authorised print-outs and distribute authorised print-outs and copies within your school;
  - (d) except as specifically provided in sections 28(a) and 28(b) you are otherwise prohibited from down-loading, storing, re-producing, transmitting, displaying, printing, copying, distributing, or using materials retrieved from the on-line services. You may not print or down-load materials without using the printing or down-loading commands of the on-line services or your web-browser software. All access to and use of the on-line services via mechanical, programmatic, robotics scripted or any other automated means not provided as part of the on-line services is strictly prohibited. Use of the on-line services is permitted only via manually conducted discrete search and retrieval activities ;
  - (e) all rights, title and interest (including all copyrights and other intellectual property rights) in the on-line services and materials (in both print and machine readable forms) belong to us or our third party suppliers. You acquire no ownership of copyright or other intellectual property rights or proprietary interest in the on-line service materials or copies thereof;

- (f) except as specifically provided herein you may not use the on-line services or materials retrieved from the on-line services in any fashion that infringes the copyright or proprietary interests therein;
- (g) you may not remove or obscure the copyright notice or other notices contained in materials retrieved from the on-line services. Other provisions that govern your use of materials are set forth in your applicable contract, on-line descriptions of files, on-line notices following file selection, individual documents retrieved from the on-line services and the on-line terms and conditions (collectively the “additional terms”), all of which are incorporated by reference into these general terms and conditions. To the extent there is any inconsistency between the additional terms and the general terms and conditions, the additional terms prevail.

#### **ACCESS TO SERVICE**

- 30. Only your students and teachers authorised by both us and you shall be entitled to access and use the on-line services and materials (“authorised users”).
- 31. Except for use incidental to occasional short term travel you may not use an identification number to access the on-line services and materials from outside the country for which it was issued.
- 32. Your identification number(s) may be restricted from accessing certain materials otherwise available in the on-line services.
- 33. Materials and features may be added to or withdrawn from the on-line services and the on-line services may otherwise be changed without notice.
- 34. You must ensure that each person having access to the on-line services and materials:
  - (a) is an authorised user; and
  - (b) is using those on-line services and materials only in accordance with these general terms and conditions and the additional terms.

#### **LIMITED WARRANTY**

- 35. We represent and warrant that we have the right and authority to make the on-line services and materials available pursuant to these general terms and conditions.
- 36. Except as otherwise provided in section 35 the on-line services and materials are provided on an “as is”, “as available” basis and we make no express warranties under this agreement including without limitation that the on-line services and materials are or will be complete or free from errors or that information will continue to be available to us to enable us to keep the on-line services and materials up to date.

#### **LIMITATION OF LIABILITY**

- 37. To the maximum extent permitted by law a covered party (as defined below) shall not be liable for any loss, injury, claim, liability or damage of any kind resulting in any way from:
  - (a) any errors in or omissions from the on-line services or any materials available or not included therein;
  - (b) the unavailability or interruption to the supply of the on-line services or any features thereof or any materials;
  - (c) subscribers use or misuse of the on-line services or materials (regardless of whether you received any assistance from a covered party in using or misusing the on-line services);
  - (d) your use of any equipment in connection with the on-line services;
  - (e) the content of materials;
  - (f) any delay or failure in performance beyond the reasonable control of a covered party; or
  - (g) any negligence of a covered party or its employees, contractors or agents in connection with the performance of our obligations under this agreement.
- 38. “Covered party” means:

- (a) us, our affiliates and any officer, director, employee, subcontractor, agent, successor or assign of us or our affiliates; and
  - (b) each third party supplier of materials, their affiliates and any other officer, director, employee, subcontractor, agent, successor or assign of any third party supplier of materials or any of their affiliates.
39. Our liability to you for breach of any condition or warranty implied under any law which cannot be lawfully modified or excluded by this agreement shall to the extent permitted by law be limited at our option to supplying the on-line services or materials again or paying for their resupply. Nothing in this agreement is intended to exclude liability for death or personal injury resulting from any negligence by us.
40. Our liability to you for loss or damage of any kind (including loss or damages caused by negligence) is reduced to the extent that you caused or contributed that loss or damage.
41. Subject to clause 40 the aggregate liability of the covered parties in connection with any other claim arising out of or relating to the on-line services or materials shall not exceed the lesser of your actual direct damages or the amount you paid for the on-line services in the twelve month period immediately preceding the date the claim arose. Your right to monetary damages in that amount shall be in lieu of all other remedies which you may have against any covered party.
42. Subject to clause 40 the covered party shall not be liable for any special, indirect, incidental or consequential damages of any kind whatsoever (including without limitation legal fees) in any way due to, resulting from or arising in connection with the on-line services, materials or the failure of any covered party to perform its obligations regardless of any negligence of any covered party.
43. Any password/ID number issued by us to an authorised user is personal and confidential to that authorised user. If we suspect that any password/ID is being used by an unauthorised user or a different authorised user to the person to whom it was issued that password/ID may be cancelled.

#### **SUBSCRIBER OBLIGATIONS ON TERMINATION/EXPIRY**

44. Within 14 days of the termination or expiry of the subscriber contract all 3P Learning digital and/or print resources held by the school, its teachers and students whether held in hardcopy or in digital format shall be returned to 3P Learning and within 14 working days of such termination/expiry the subscribers principal shall certify and warrant in writing that this provision has been complied with.

#### **MISCELLANEOUS**

45. This agreement is for the minimum period specified in the PPP.
46. Neither party will disclose to any third party details of the agreement or any of the negotiations undertaken in relation to this agreement without the prior written consent of the other.
47. The failure of us or any third party supplier of materials to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.
48. You may not sign your rights or delegate your duties under these general terms and conditions or any additional terms without our prior written consent.
49. These general terms and conditions and the additional terms shall be governed by and construed in accordance with the laws of New Zealand.
50. Each third party supplier of materials has the right to assert and enforce these provisions directly on its own behalf as a third party beneficiary.
51. We will use personal information collected about authorised users for the purposes of:
- (a) providing access to and use of the on-line services to authorised users;
  - (b) providing customer support, billing and other similar activities related to the on-line services; and

(c) keeping authorised users informed about products, services, offers and upcoming events and to improve our services. If you do not wish to receive information about other products, services, offers and events please notify us in writing.

52. These general terms and conditions will be enforced to the fullest extent permitted by applicable law. If anything in these general terms and conditions is unenforceable, illegal or void then it is severed and the rest of these general terms and conditions remain in force.
53. These terms constitute the entire agreement between the parties concerning the subject matter of these general terms and conditions and supersede all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties.