

Bliss Consulting Pty Ltd Software Licence Agreement

Definitions

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"acceptance date" means the date upon which the software is accepted as provided by Clause 8.

"commencement date" date of delivery of software

'delivery date' means the date password provided;

'licence' means the licence of software granted pursuant to this agreement;

'licence fee' means the amount so specified in purchase order

'location' means the place at which the training material will be used

'media' means the media on which the software is recorded or printed;

"software" means the Online Learning Centre designed and developed by Bliss Consulting Pty Ltd. Including online version, CD version and any relevant documentation;

and

'supplier' means the licensor of the software.

Words importing the singular include the plural and vice versa and words importing one gender shall include all other genders. Headings are for ease of reference only and shall not affect the interpretation of this agreement.

Duration

2. (1) The agreement commences on the delivery date.

(2) Subject to the terms of this agreement, the licence shall continue in perpetuity.

Licence Fee

4. (1) In consideration of the licence, the customer shall pay the licence fee to the supplier within 30 days after the acceptance date.

(2) The licence fee is exclusive of all taxes, duties and surcharges payable in respect of the software and in respect of this agreement.

(3) If payment is not made within 30 days of the due date, interest will be payable by the customer at the rate of 12 per cent per annum on the overdue amount and, if any payment is owing after 60 days from the due date, the supplier shall be entitled to suspend its remaining obligations under this agreement and to re-possess the software.

Conditions of licence

5. (1) The supplier warrants that it has the authority to grant the licence.

(2) The licence shall be non-transferable and non-exclusive to the customer.

(3) Use of the software is limited to the , unless the consent of the supplier is obtained to use the software on alternative equipment. Such consent shall not be unreasonably withheld.

Delivery

6. The supplier shall deliver the software to the location on or before the delivery date or on such other date as is mutually agreed between the parties.

Installation

7. The supplier is not liable to install the software or to provide any services or support in respect of installation of the software under this agreement.

Acceptance

8. (1) Upon receiving the software, the customer shall be responsible for ensuring that the software is used in accordance with the specifications.

(2) If, during a period of 10 working days following the delivery date, the software fails to perform substantially in accordance with the specifications, it will be deemed not to be accepted.

(3) If the software is deemed not to be accepted pursuant to clause 8(2), the supplier shall be given the opportunity to rectify the defect or replace the software within a further period of 14 days.

(4) If the software fails to perform substantially in accordance with the specifications during the 14-day period referred to in clause 8(3), the customer may, at its option, grant a further period during which satisfactory performance is to be achieved or alternatively terminate the agreement.

(5) The software will be deemed accepted if it does not fail to substantially perform in accordance with the specifications during any of the periods referred to in the preceding sub-clauses.

(6) The software will be deemed accepted if the customer fails to install the software within seven days of delivery.

Ownership

9. The supplier retains ownership of the software whether in its original form or as modified by the customer during the term of the licence.

Copies

10.(1) The customer shall not copy the software, in whole or in part.

Modifications

11(1) The customer shall not modify the whole or any part of the software or combine or incorporate the whole or any part of the software in any other program or system without the prior consent in writing of the supplier.

(2) If the software is modified in accordance with the preceding clause 11(1), the modifications shall, unless the supplier directs otherwise, be made in accordance with a written proposal submitted by the customer to the supplier.

(3) The customer shall fully indemnify and hold harmless the supplier against any liability incurred if the said modifications infringe the intellectual property rights of a third person.

(4) The software as modified remains the property of the supplier.

(5) This agreement shall continue to apply to the software as modified.

Security

12. The customer shall be responsible for protecting the software at all times from unauthorised access, use or damage.

Risk

14. Risk of loss or damage to the software or the media shall pass to the customer upon delivery of the software to the location.

Warranties

15.(1) The supplier warrants that the software will perform substantially in accordance with the specifications for a period of 90 days after the acceptance date.

(2) If, within 90 days after the acceptance date, the customer notifies the supplier in writing of -

(a) the fact that the software is not performing substantially in accordance with the specifications; and

(b) the alleged defects or errors, with sufficient particularity to enable the supplier to remedy the defects or errors,

the supplier shall at its own expense, commence to examine the software within ten working days and, as soon as practicable thereafter, rectify the defect or replace the software.

(3) The warranty contained in clause 16(2) -

(a) is subject to the customer having fully complied with its obligations under this agreement;

(b) is not a warranty that the results obtained from the software will be in accordance with the customer's expectations; and

(c) does not operate where the substantial non-performance arises in any respect from the installation of the software, the nature or operation of the equipment on which the software is used or the use of any materials or software not provided by the supplier.

Indemnity

16.(1) The supplier warrants that it has the right to grant the licence to the customer.

(2) Subject to clause 17(3), the supplier shall indemnify and hold harmless the customer against any claim made against the customer by a third party alleging that the software infringes the copyright of that third party.

(3) The supplier shall not be liable to the customer under clause 17(1) or clause 17(2) if -

(a) the customer does not notify the supplier of the other person's claim or of infringement of copyright within seven days after becoming aware of the claim;

(b) the supplier's ability to defend the claim has been prejudiced by the customer's non-compliance with any of its obligations under this agreement;

(c) the customer does not give the supplier reasonable assistance in defending the claim;

(d) the claim has arisen because of the use of the software in combination with equipment, materials or computer programs not supplied or approved by the supplier; or

(e) the customer does not permit the supplier to have control of the defence of the claim and all related settlement negotiations.

Termination

17.(1) For the purpose of this agreement, the following are terminating events -

(a) the breach or threatened breach by either party of any of its material obligations under this agreement;

(b) the appointment of any type of insolvency administrator in respect of the property or affairs of either party;

(c) the entry or proposed entry by either party into any scheme, composition or arrangement with any of its creditors;

(d) the permanent discontinuance of use of the software or any part of the software by the customer;

(e) the merger with or the takeover of either party by another person;

(f) any event described in this agreement as a terminating event; or

(g) the purchase of the software by the customer pursuant to an agreement between the parties.

(2) The licence may be terminated immediately on the happening of a terminating event at the option of the affected party.

(3) If the terminating event is one specified in clauses 18(1)(a) to 18(1)(f), the affected party shall give to the other party notice of the happening of that event and require the breach to be remedied or a written undertaking to be given that the breach will not occur, as the case may be.

If the breach is not remedied or the undertaking not given (as the case may be) within 14 days the affected party may agree to waive its rights under this clause if satisfied that the happening of the terminating event has not in any way prejudiced its position under this agreement.

(4) Neither party shall be liable for the consequences of an occurrence of any event beyond its reasonable control.

(5) Immediately a terminating event specified in clauses 18(1)(a) to 18(1)(f) occurs, and the subject of that terminating event is the customer, the customer shall immediately on termination return to the supplier the software and all copies of the software, all revisions, enhancements and upgrades of the software, the media and the manual of specifications. Alternatively, if the supplier requests, the customer shall destroy such software, copies, revisions, enhancements and upgrades by erasing them from the media and shall certify in writing to the supplier that they have been destroyed.

(6) Any termination of the licence shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of this agreement which is expressly or by implication intended to continue in force after such termination.

Entire agreement

19. This agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the software. No addition to or modification of any provision of this agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of the party.

Notices

20. All notices which are required to be given under this agreement shall be in writing and shall be sent to the address of the recipient set out in the purchase order or such other address as the recipient may designate by notice given in accordance with this clause. Any notice may be delivered by hand or by pre-paid letter or telex. Any such notice shall be deemed to have been served when delivered (if delivered by hand) or 48 hours after posting (except by pre-paid letter) or when despatched (if delivery by telex) or on transmission by the sender (if sent by facsimile).

Assignment

21. Neither party shall assign, whether in whole or part, the benefit of this agreement or any rights or obligations hereunder, without the prior written consent of the other party.

Law

22. This agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of Victoria Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.

Waiver

23. No forbearance, delay or indulgence by a party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

Severability

24. Should any part of this agreement be or become invalid, that part shall be severed from this agreement. Such invalidity shall not affect the validity of the remaining provisions of the agreement.

Dispute resolution

25. Any dispute or difference arising in connection with this agreement shall be submitted to arbitration in accordance with, and subject to, the Rules for the Conduct of Commercial Arbitrations of the Institute of Arbitrators, Australia. During such arbitration, both parties may be represented by a duly qualified legal practitioner.