

STANDARD TERMS OF TRADE

1. DEFINITIONS

- 1.1 'Agreement' means these Standard Terms read with the Company's accepted enrolment form and quotation and the Customer's accepted purchase order, recorded via a website based transactional exchange or such other transactional documentation or method of exchange which might exist, which has the effect of an offer and acceptance between the Parties, will constitute the agreement between the Parties.
- 1.2 'Blended Learning' means a fusion of online training, and virtual face to face tuition with an accredited trainer.
- 1.3 'Business Day' means any day excluding Saturdays, Sundays and official public holidays in the Republic of South Africa, between the hours of 08h00 and 16h30.
- 1.4 'Company' means SmartPM Training (Pty) Ltd, registration number 2020/212163/07.
- 1.5 'Consulting' means the provision of professional advice by the Company.
- 1.6 'Course Materials' means all Course related material including but not limited to documentation, presentation slides, practice examination papers, examination papers, handouts, reference guides and / or manuals, in whatsoever format, including but not limited to electronic format, and includes Pre-Course Materials.
- 1.7 'Courses' means Blended Learning, Public Courses, In-house Courses and / or Consulting or any number of them, and 'Course' bears a corresponding meaning.
- 1.8 'Customer' means the person, firm, company or other entity enrolling a Delegate for training by the Company.
- 1.9 'Delegate' means the person enrolled by the Customer for training by the Company.
- 1.10 'In-house Course' means any course offered by the Company to a Customer at a Customer specified location or at a venue for exclusive attendance.

- 1.11 “Parties” means the Company and the Customer, and “Party” means either one of them.
- 1.12 ‘Pre-Course Materials’ means any Course Material dispatched to the Customer or Delegate in advance of a Course.
- 1.13 ‘Public Course’ means any course offered by the Company for open subscription at locations specified on its website from time to time.
- 1.14 “Services” means the rendering of the Courses and the provision of the associated Course Materials by the Company to the Delegates on behalf of the Customer or directly to the Customer, as agreed between the Company and the Customer.
- 1.15 ‘Standard Terms’ means these standard terms of trade of the Company, as published by the Company on its website and as amended from time to time.

2. INTERPRETATION

- 2.1 The headings of the clauses in these Standard Terms are for the purpose of convenience and reference only and shall not be used in the interpretation of these Standard Terms nor any clause hereof.
- 2.2 Unless a contrary intention clearly appears, words importing:
- 2.2.1 any one gender includes the other two genders;
- 2.2.2 the singular includes the plural and vice versa; and
- 2.2.3 natural persons include created entities (incorporated or unincorporated) and vice versa.
- 2.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of these Standard Terms.
- 2.4 If a term is defined within the context of a clause in these Standard Terms, that definition shall, unless it is clear from that clause that the definition has limited application to it, have the same meaning throughout these Standard Terms.

- 2.5 The rule that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract (the Contra Proferentem Rule), shall not apply to the interpretation of these Standard Terms.
- 2.6 The words "include", "including" and "in particular" shall not be interpreted as limiting the generality of any preceding word/s or introducing an exhaustive list.
- 2.7 Any reference in these Standard Terms to any other agreement, document or statute shall be interpreted as a reference to such other agreement, document or statute as same may have been amended varied, novated or supplemented, or may from time to time hereafter be, amended, varied, novated or supplemented.
- 2.8 Any reference to any legislative provision is deemed to include any subordinate or delegated legislation.
- 2.9 Where in the Agreement a number of Business Days is provided for between the happening of one event and another, the number of days must be calculated by:
- 2.9.1 excluding the day on which the first event occurs;
 - 2.9.2 including the day on or by which the second event is to occur; and
 - 2.9.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated above, respectively.
- 2.10 Where in the Agreement provision is made for the giving of a notice, the notice shall be given in writing.

3. WEBSITE BASED TRANSACTION

- 3.1 The website on which these Standard Terms appear is operated by the Company, which has its registered office at 375 Che Guevara, Glenwood, Durban, 4001, Republic of South Africa, telephone 011 966 8146 and email info@smartpm.co.za, which is the contracting party and at which physical address all transactions with any Customer of the Company will be deemed to have occurred.

3.2 By accessing or using the website and transacting with the Company via the website or accepting these Standard Terms via the website, the Customer represents that it is of full legal and contractual capacity in its state or province of residence and agrees to be bound by these Standard Terms.

3.3 Any queries about these Standard Terms must be directed to the Company via its email address.

4. CONSTRUCTION OF AGREEMENT

4.1 These Standard Terms are deemed to be incorporated in all Agreements between the Company and the Customer from time to time.

4.2 The Company may amend these Standard Terms from time to time in its discretion, by publishing the amended version on its website. The amendment will be effective from date of publication on the website. The amendment will not apply retrospectively to any in force Agreements.

4.3 In the case of any inconsistency or conflict between these Standard Terms and any other document or contract, these Standard Terms shall prevail unless they are expressly referred to and varied or novated and the variation or novation is agreed to by a director of the Company.

4.4 Where these Standard Terms are silent on matter which is provided for in any other transactional document agreed between the parties, such other provision shall be in force and effect between the Parties.

4.5 No oral instructions, agreements, variations or novations shall have any force or effect.

4.6 The Agreement shall become effective on the date on which the Company's fee for Services required by the Customer is accepted by the Customer.

4.7 The Agreement shall terminate on the completion of the Services unless cancelled prior thereto by either Party on grounds of breach or by way of written consensual termination accompanied by handwritten signatures of the Parties.

4.8 The Customer warrants that unless otherwise notified to and agreed with the Company all Delegates attending Courses are employed directly by the Customer. Despite the foregoing and the benefits for the Delegates arising out of the Agreement, the Agreement is concluded strictly between the Company and the Customer and the Customer shall be liable to the Company for payment of the Company's fees for the Services.

5. SERVICES

5.1 The Company will:

- 5.1.1 render the Services in a professional manner, in accordance with generally recognized practices and standards;
- 5.1.2 provide appropriately qualified and experienced instructor(s) to present the Courses;
- 5.1.3 provide Course Materials that are appropriately constituted and accredited for their intended purpose; and
- 5.1.4 provide certified proof of the successful or unsuccessful conclusion of a given Course by a Delegate to the Customer.

6. OBLIGATIONS OF THE CUSTOMER

- 6.1 The Customer must bring these Standard Terms to the attention of the Delegates attending a Course.
- 6.2 It is the Customer's responsibility to provide all venue facilities and to ensure that the site is prepared for the presentation of the Course.
- 6.3 The Company reserves the right to delay, discontinue or cancel a Course if in its opinion the venue or associated conditions are unsuitable for the proper or effective presentation thereof.
- 6.4 It is the responsibility of the Customer to ensure that it and/or its Delegates meet the prerequisites for admission to a given course, as published by the Company on the website.
- 6.5 Where prerequisites include a qualification, evidence of this must be provided to the Company.

7. TIMING & MANNER OF PERFORMANCE

- 7.1 Timing will not be of the essence in relation to the estimated lead time for, commencement date of and / or the estimated duration of the Services.
- 7.2 If there are variations, extras and / or extensions to the initial enrolment form, the commencement date or duration may be extended by the amount of time the Company needs, taking into account its planning, to perform the Services and the variations, extras and / or extensions.
- 7.3 Where the inability to utilize a particular or any venue for the rendering of the Services in person is due to circumstances beyond the control and reasonable foreseeability of the Company (including but not limited to circumstances such as riots, natural disasters, epidemic, pandemic, acts of authority and / or state, whether lawful or unlawful), the Company may elect to continue to provide the Services via an online video portal instead.
- 7.4 Under no circumstances will the Company reasonably exceeding the commencement date or duration of the Services and / or altering the manner of provision of the Services in terms of clause 7.3 give the Customer the right to refund of fees, reduction of fees, compensation, damages or to cancel the Agreement. The Customer hereby disclaims against and indemnifies the Company against any claims attributable to the Company reasonably exceeding the commencement date or duration and claims for costs on the attorney and own client scale.

8. FEES

- 8.1 The Company's fees for the Services are subject to change from time to time. The applicable binding fees are those stated in the Company's formal quotation.
- 8.2 The fees do not include any travel, accommodation or living expenses which the Delegate may incur whilst training. These are for the account of the Customer or the Delegate.
- 8.3 For Blended Learning, the fees are inclusive of virtual classroom training with a certified coach, an official textbook, syllabus, past papers, 6 months access to the online video portal and the examination fees.
- 8.4 For Public Courses, the fees are inclusive of tuition, an official textbook, pre-course materials, past papers and course materials, examination fees and lunches and refreshments at the venue.

- 8.5 For In-house Courses, the fees and inclusions will be detailed in the quotation.
- 8.6 Foundation / Practitioner Pass Insurance covers the Delegate for one free re-write if required. Insurance must be taken at the point of enrollment and is only valid if the full invoice is settled prior to the first day of the scheduled Course.
- 8.7 Where a Customer enrolls a Delegate who is located outside of the Republic of South Africa for a Course, the Customer will be responsible for the payment of the charges for the delivery of Course Materials to the Delegate. Such payment shall be due in advance of delivery and the risk in delivery shall be borne by the Customer.

9. PAYMENT TERMS

- 9.1 Fees are payable by the Customer on presentation of the official Company invoice, which will be in advance of Services being rendered. The Company reserves the right to withhold the dispatch of Course Materials, the scheduling of Courses and the conducting of Courses until all invoiced fees are paid in full.
- 9.2 Customers wishing to make payment from accounts held outside of South Africa, will be responsible for all bank charges levied against the Company when accepting funds.
- 9.3 Customers wishing to deposit cash into the Company's account will be liable for the bank charges incurred for doing so.
- 9.4 All fees exclude VAT.

10. NO DEFERMENT OF PAYMENTS

- 10.1 The Customer may not defer, withhold or reduce any payment or part thereof due to the Company arising out of the Agreement.
- 10.2 The Customer's obligation to make any payment arising out of the Agreement is absolute and unconditional, regardless of any contingency, including but not limited to any right of set-off, counterclaim, defence or contribution.

11. CANCELLATION AND TRANSFER POLICY

- 11.1 The Customer must advise the Company of any cancellations by email to the address info@smartpm.co.za. Customers are further advised to seek confirmation of delivery of the email by calling the Company on 011 966 8146.
- 11.2 For the purposes of cancellation, the day the notice is received is not calculated. The Business Day following the day of receipt of the Notice is deemed to be the day notice is received.
- 11.3 For the purposes of cancellation, the start date of the Course is not included in any notice period.
- 11.4 Non-attendance by any Delegate on any Course will constitute cancellation without notice and no refund will be given.
- 11.5 Cancellation by the Customer after dispatch of any Pre-Course Materials will incur a charge of R2,000-00 for Pre-Course Materials in addition to the charges detailed below.
- 11.6 All cancellations will incur an administration charge of R350-00 in addition to the charges detailed below.
- 11.7 The Company reserves the right to cancel or change the location of a Public Course and undertakes to provide reasonable notice of the change except in an emergency. In the event of a cancellation a full refund will be given to the Customer less the cost of any Pre-course Materials dispatched.
- 11.8 Customers must provide a list of Delegates to the Company with the purchase order. Delegate substitution is allowed up to 10 Business Days prior to the scheduled start date of a Course at no cost. Substitution within 10 Business Days will incur an administrative charge of R350-00 per substitution.
- 11.9 In the event of a Delegate substitution the Customer must transfer ownership of any Pre-course Materials between Delegates. Alternatively, additional Pre-Course Materials can be dispatched at a cost of R2,000-00 plus an administration charge of R350-00.

Table of cancellation and re-scheduling fees for Blended Learning and Public Courses

Working Days	Cancellation	Re-scheduling
0-5 working days	100% of course fee	100% of course fee
6-10 working days	75% of course fee	50% of course fee
11-15 working days	60% of course fee	25% of course fee
16-20 working days	55% of course fee	10% of course fee
21+ working days	50% of course fee	R750 admin fee

Table of cancellation and re-scheduling fees for In-house Courses

Working Days	Cancellation	Re-scheduling
0-14 working days	80% of course fee	50% of course fee
15-28 working days	70% of course fee	30% of course fee
28 + working days	60% of course fee	R2500 + R350 / delegate

11.10 Where refunds are to be made, they will be paid by EFT only and will be processed within 30 days, subject to satisfactory verification of banking details.

11.11 The failure by a Delegate or the Customer to complete a Course, for any reason whatsoever, shall not bring either of them under the terms of the cancellation and refund policy and shall not entitle either of them to any refund or reduction of the fee.

12. COPYRIGHT

12.1 The Course Materials, Course content and speaker’s notes are copyrighted, and any unauthorized copying, recording, reproduction and / or use thereof by the Customer and / or the Delegate, whether gratuitously or for reward, is prohibited and will violate copyright, and other laws.

13. BREACH

13.1 If any Party breaches any provision of the Agreement (“Defaulting Party”) and, if such breach is capable of being remedied, fails to remedy the breach within 10 Business Days after written notice has been given to the Defaulting Party by the other Party requiring the breach to be remedied (“Aggrieved Party”), the Aggrieved Party shall be entitled, without prejudice to any other rights it may have, to

13.1.1 seek an order for specific performance against the Defaulting Party; or

13.1.2 to cancel the Agreement and claim for:

13.1.2.1 any damages suffered by the Aggrieved Party; and / or

13.1.2.2 restitution of performance made by the Aggrieved Party pursuant to the fulfilment of the Aggrieved Party’s obligations in terms of the Agreement.

13.2 The Defaulting Party shall be liable for all legal costs and expenses (calculated on an attorney and own client scale) incurred as a result of any breach of any provision of the Agreement by the Defaulting Party.

14. JURISDICTION

14.1 The law of the Republic of South Africa shall apply to the interpretation and enforcement of the Agreement and any dispute arising out of the Agreement.

14.2 The Parties agree to the jurisdiction of the Magistrate’s Court in respect of any legal proceedings brought by either Party, notwithstanding that such claim would otherwise be beyond the jurisdiction of the Magistrate’s Court. This shall not in any way prevent the Party instituting the legal proceedings from taking action against the defaulting Party in any other Court with competent jurisdiction.

15. GENERAL

- 15.1 The Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.
- 15.2 No amendment or consensual cancellation of the Agreement, any provision hereof and / or this non-variation clause, and no extension of time, waiver or relaxation or suspension of any of the provisions of the Agreement, shall be binding unless recorded in writing and signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). For the purposes of this clause “written” means manuscript or typed text on paper and “sign” means manuscript signature.
- 15.3 No extension of time or waiver or relaxation of any of the provisions of the Agreement shall operate so as to preclude any Party from thereafter exercising that Party’s rights strictly in accordance with the Agreement.
- 15.4 To the extent the law permits, neither Party shall be bound by any representation or warranty not recorded in the Agreement, irrespective of whether the representation or warranty induced the Parties to conclude the Agreement and irrespective of whether the representation or warranty was made negligently or not.
- 15.5 The Agreement shall be binding on all the Parties and on their estates, executors, curators, debt counsellors, administrators, liquidators, business rescue practitioners, successors-in-title or assigns, as may be applicable in the circumstances.
- 15.6 Any provision in the Agreement which is presently or in the future becomes illegal, invalid or unenforceable shall, to the extent of such illegality, invalidity or unenforceability, be treated as if it had not been drafted and severed from the Agreement, without invalidating the remaining provisions of the Agreement.
- 15.7 The rights and obligations of the Parties in respect of the Agreement shall not be ceded or assigned without the prior written consent of all the Parties, save to the extent that the Agreement expressly provides to the contrary.
- 15.8 The Parties and their representatives are deemed to warrant that they are duly authorised to conclude the Agreement and that there is no restriction or condition which prohibits the conclusion of the Agreement or which has not been satisfied, as the case may be.