

Delivery Package Conditions of Sale and Use

1. Overview

The following terms and conditions govern the sale and use of this Delivery Package, whether it was bought individually under a Standard, National or Single user license; or accessed as part of an Annual license.

- 1.1. Any breach of these terms and conditions by the Licensee shall cause them to forfeit their rights to have access to and use this Delivery Package in any form and to any extent whatsoever. In such an event the Licensee shall not be entitled to any refund, reimbursement, or compensation for loss arising from the breach or the forfeiture of their rights to use this Delivery Package.
- 1.2. Instant Education Solutions (hereafter, 'IES') reserves the right to recover any relevant damages and to seek prosecution of the offending party or parties at its sole discretion.

2. Acceptance of License Terms and Conditions

Either the use of, or payment for, a Delivery Package is evidence of acceptance of these terms and conditions, whichever occurs earliest.

- 2.1. Downloading or accessing a Delivery Package from the online website library, and the non-return of resources pursuant to the Right of Return, both constitute use.

3. Terms of Payment

- 3.1. For the purchase of individual (Standard, National or Single) Delivery Packages, payment in full must be made by the 20th of the month following the date on which the goods are dispatched by IES.
 - a) The Licensee shall be liable to meet the full cost of all freight charges and all government levies or taxes due on the product.
- 3.2. For the purchase of Annual Licenses, refer to the 'Annual Secondary Schools License Terms and Conditions' document.
- 3.3. All Licensees shall be liable to pay in full the costs associated with debt collection, including (but not limited to) debt collection agency fees and tribunal or court costs, in the event that the invoice is unpaid and is made the subject of a formal debt collection process by IES.

4. Right of Return

- 4.1. Goods sold in hardcopy and CD-ROM format are sold with a fourteen day right of return provided that the Delivery Package is returned in full and in a reusable condition. The Delivery Package may not be copied, stored or otherwise reproduced or distributed by the Licensee if the fourteen day right of return is to be exercised.
- 4.2. Goods downloaded from the on-line library or shipped via email may not be returned or refunded.

5. Consent to Receive Electronic Messages

- 5.1. As a term of this license the Licensee hereby explicitly grants permission to IES to contact them, or their employees, by means of the use of electronic messages for the purpose of providing services which form a part of this license including general after-sales services. These services include, but are not limited to, providing information on:
- quotations
 - updates to the products and services
 - new products or services
 - the client's web library
 - the activities of customer representatives in your region that are intended to maintain contact with clients and keep clients informed of relevant developments.
- 5.2. The Licensee, excluding Licensees who have bought under Annual Licenses, may unsubscribe from the electronic messaging services at any time by e-mailing IES at instant@instant.org.nz and clearly stating each of the email address(es) that they wish to be unsubscribed from the electronic message services. Address(es) so specified will be removed within five working days.
- 5.3. A choice to unsubscribe from the electronic message services will not affect the Licensee's continued entitlement to use any products or services for which they hold a valid and current license. A choice to unsubscribe from the electronic messaging services will remove any obligation from IES to provide any information to the Licensee in any other form, or by any other means of transmittal, whether bought as a component of this license or not, or to provide the Licensee or their employees, with access to any web library or electronic file download facilities.
- 5.4. IES shall not be liable for any consequential issues arising from the decision of the Licensee to unsubscribe from the electronic messaging service, including, but without limitation, any issues arising from the use of products or services that are out of date with respect to moderation requirements.
- 5.5. Licensees who have bought under an Annual Licenses must receive electronic messages for the duration of the license agreement.

6. Free Upgrade

- 6.1. For the purchase of individual (Standard, National or Single) Delivery Packages, the Licensee shall be entitled to an upgrade of the Delivery Package, free of charge, if NZQA publish a new version of the Unit Standard or Achievement Standard within twelve months of the date of purchase provided that IES upgrade their Delivery Package to the new NZQA version within that twelve months.
- a) Such a right will only apply in the event that the Licensee accesses such an upgrade by downloading it from the on-line library. The free upgrade to the new NZQA version must be redeemed within twelve months of the date of the initial purchase.
- 6.2. All other upgrades, including those outside this twelve months post-purchase period, will incur the relevant cost for the upgrade which may be altered from time to time by IES at their sole discretion.

- 6.3. IES may, at its sole discretion, enable a paid-up client who is registered on the website to download additional or subsequent upgrades of a Delivery Package for the same NZQA version via its on-line library for a period of twenty-four months from the date on which a new or upgrade licence to use that same Delivery Package has been purchased by that client.
- 6.4. These free additional or subsequent upgrades must be downloaded from the Instant website and will not be provided in either hardcopy or CD-ROM format. There is no obligation upon IES to provide this additional service or to continue to provide it. If the Licensee wishes to purchase a hardcopy of CD Rom format of the upgrade (of the same NZQA version) then an additional standard cost will apply.
- 6.5. For Annual Licenses, the Licensee will have access to any upgrades due to moderation or internal quality control, provided that their license is current.

7. Product Quality

The Delivery Package is designed to support teaching and formal assessment.

- 7.1. IES warrants that reasonable efforts have been made to ensure that the Delivery Packages are of a suitable quality for commercial sale. This warranty is the sole warranty provided by IES and the Licensee's sole remedy and replaces all other warranties or conditions, expressed or implied, including but not limited to any implied warranties or conditions for fitness for a particular purpose, to the extent permitted by law. In particular, it is explicitly stated that NO guarantee is given that the materials will pass moderation by external standard setting or moderation monitoring authorities on every occasion.
- 7.2. In the event that the assessment materials fail to comply with the requirements of relevant external standard setting or moderation monitoring authorities, IES will modify and replace the Delivery Package free of charge, provided that:
 - a) the Licensee, when using these materials, has internal moderation and quality control systems in place that comply with the requirements of the accreditation that the institution holds to teach and assess the materials in the jurisdiction where they are delivered;
 - b) the Delivery Package is for the current version of the assessment standard authorised by the external standard setting or moderation monitoring authorities;
 - c) the Licensee supplies IES with a copy of the report from the external standard setting or moderation monitoring authorities that notifies the failure of the materials to meet the standard and specifies the areas that require remedial attention.;
 - d)
 - i) the Licensee of an Individual (Standard, National or Single) License downloads the modified Delivery Package within one month of it being published by IES. Only a download from the on-line website library will be made available free of charge
 - ii) the Licensee of an Annual License has a current and valid Annual license

IES shall have no liability whatsoever with regard to replacing the materials if any of these conditions are not met.

8. Copyright

- 8.1. The material contained in Delivery Packages is owned by IES and ownership of the copyright is NOT transferred as part of the purchase of the Delivery Package.
- 8.2. If supplied in an editable format, the Licensee may alter the Delivery Package by up to ten per cent of its teaching content only. It should be noted that the reproduction of the content in any alternative form, including the alteration of layout or graphics, shall not void the copyright held by IES in the materials or derivatives of them.
- 8.3. Any alteration of pre-moderated assessments will null and void any product quality guarantee within these conditions of sale and use.
- 8.4. All copyright statements and brand identification tags must be retained in the material at all times. This applies irrespective of whether the material was supplied as hardcopy, electronic, web based course content, or a SCORM packet or similar.

9. Licenses

- 9.1. The Delivery Package may not be on-sold or distributed or gifted or emailed or duplicated or scanned or otherwise be made available by any means to any other person or organisation or party other than the Licensee without the express written permission of the Manager of IES, except in accordance with the terms of this licence.
- 9.2. No Licensee is permitted to make the contents of a Delivery Package, in full or in part, available to any other person or organisation.
- 9.3. Potential Licensees who are unable to comply with these licence terms, or may be reasonably expected to have foreseen that they could not have done so, must request a variation to their licence conditions. Such agreements will be priced on a case-by-case basis, and there is no obligation on IES to agree to any such arrangement. All such agreements must be documented in writing and have appropriate proof of authorisation by the Manager of IES.

10. Types of Licence and Restrictions On Use

The following types of licence and the restrictions on use applicable to each licence will apply. Licences are not transferrable between types of licence or Licensees.

10.1. Standard Licence

This type of licence is restricted to:

- a) NZQA registered Private Training Establishments
for Use (1) of a Delivery Package at up to four geographic sites operated by the PTE within the same country or state (in the case of federations). Use of the resources via the internet or other electronic means of distribution is prohibited under this type of licence unless specifically provided for in Endnote Two (2);

OR

- b) Secondary Schools (other than The Correspondence School of New Zealand)

for Use(1) of a Delivery Package at up to four geographic sites operated by the School within the same country or state (in the case of federations). Use of the resources via the internet or other electronic means of distribution is prohibited under this type of licence unless specifically provided for in Endnote Two (2).

10.2. National Licence

This type of licence is available to:

- a) NZQA registered Private Training Establishments, or
- b) NZQA Registered Polytechnics, or
- c) NZQA Registered Wananga, or
- d) Industry Training Organisations, or
- e) non NZQA registered trainers, or
- f) The Correspondence School of New Zealand

for Use(1) of a Delivery Package at more than four geographic sites operated by the PTE within the same country or state (in the case of federations) or distance learning. Use of the resources via the internet or other electronic means of distribution is allowed under this type of licence unless specifically provided for in Endnote Three below (3);

10.3. Single User Workbook Licence

This type of licence is restricted to;

- a) registered Home School students or
- b) small rural schools with very small numbers of eligible students.

The content and extent of the resources supplied under a single user workbook licence and the basis of supply will be agreed to in writing entirely at the discretion of Manager, IES, prior to supply of the materials but in any event will not entitle the recipient to free upgrades of any kind, nor use of the online Member's Library.

10.4. Annual License

The Annual License is bound by the "Annual Secondary Schools License Terms and Conditions" document. Refer to this document for the license conditions.

11. No Assignment

The Licensee may not subcontract or otherwise assign their rights, obligations and responsibilities under this Agreement to any other party.

12. Disclaimer and Limitation to Liability

- 12.1 IES does not make any warranty or assume any legal liability or responsibility for the accuracy, currency, or completeness of any information contained in this Delivery Package.
- 12.2 IES is not liable to a Licensee for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with these conditions, the Delivery Package, its use, and other application. In particular, IES excludes liability for any consequential loss or damage which may arise in respect of the Delivery Package or its use or for loss of profit, data, business revenue, goodwill, or anticipated savings. These exclusions of liability apply to all liability whether a contract and/or tort (including negligence) or otherwise. If notwithstanding these provisions, IES becomes liable for loss or damage that would otherwise have been excluded, the parties agree that such liability is limited to the amount of the licence fee paid by the Licensee for the Delivery Package.

13. NZQA Copyright

These documents are copyright to the New Zealand Qualifications Authority and have been reproduced with permission.

14. Definitions

INSTANT EDUCATION SOLUTIONS is a trading name of Apostolic Training Centres Limited, a private charitable company registered with the New Zealand Companies Office, [913506], and also registered in New Zealand as a Private Training Establishment by the New Zealand Qualifications Authority pursuant to the Education Amendment Act 1990. ATC NZ Ltd, Apostolic Training Centres and ATC have a similar meaning.

DELIVERY PACKAGE means the content and format and container for the materials supplied under this Agreement. Delivery packages may consist of individual assessments only, a group of assessments, teaching material only, or a combination of assessment and teaching material. Teaching and Assessment materials supplied may relate to NZQA Unit Standards and/or NZQA Achievement Standards.

LICENSEE is any organisation or person who purchases any Delivery Package(s) under either a Standard, National, Single, or Annual user license.

Any person buying on behalf of an organisation is deemed to be acting as a representative of the organisation unless agreed in writing with IES. As a result, the organisation owns the rights to use the Delivery Package, not the person.

Endnotes

(1) USE means reproduction of the content of the Delivery Package without limit for the use by students enrolled in the educational institution, and teachers employed by that institution, provided that such reproduction is in the format permitted by that type of licence, and the nature and extent of distribution is in accordance with the terms of that type of licence.

(2) Licensees may:

I. install the Delivery Package in electronic form onto a computer or computer network (a LAN or private WAN but excluding the public internet) for access by students enrolled in the educational institution, and teachers employed by that institution, at up to four geographic sites within the same country or state (in the case of federations);

II. make a single backup copy for data recovery purposes.

Hardcopy materials may not be reproduced in electronic form.

(3) Endnote Three: Licensees may:

I. install the Delivery Package in electronic form onto a computer or computer network (a LAN or private WAN and including the public internet) for access by students enrolled in the educational institution, and teachers employed by that institution, within the same country or state (in the case of federations);

II. make a single backup copy for data recovery purposes.

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