

GENERAL TERMS AND CONDITIONS

governing the provision by

Systems Applications Products (Africa) (Proprietary) Limited
(“SAP Africa”)

to

The Customer

OF STANDARD TRAINING AND EDUCATION SERVICES

1. OFFER

- 1.1 SAP Africa offers to provide to the Customer those training and education services and services incidental thereto (“the Services”) offered by SAP Africa from time to time as described in SAP Africa’s current Course List, and such other Courses specifically agreed to by SAP Africa (“the Courses”).
- 1.2 The Customer shall, if it requires the Services, duly complete SAP Africa’s Enrolment Form published on the SAP Africa website and return it to SAP Africa’s designated electronic mailbox for processing at the following address for consideration and acceptance:

education.southafrica@sap.com
- 1.3 The Customer shall specify in the Enrolment Form the Courses it requires, the number of Delegates nominated by it, the full names and contact details of the delegates, and such other information requested by SAP Africa.
- 1.4 The Customer shall familiarise itself with the pre-requisite qualifications for Delegates as published on the SAP Africa website.
- 1.5 Failure to complete and/or furnish the requested information and/or comply with the payment terms, shall entitle SAP Africa to reject the Enrolment Form.
- 1.6 Only upon receipt of written confirmation of the Course by SAP Africa will the contents of the Enrolment Form be binding upon SAP Africa provided that all and any such acceptance shall be deemed conditional upon one or more of the following:
 - 1.6.1 that a sufficient number of Delegates are enrolled to attend the same Course;
 - 1.6.2 the availability of the resources; and
 - 1.6.3 the occurrence of unforeseen circumstances that render the Course commercially or otherwise practically unfeasible.

- 1.7 Notwithstanding anything to the contrary contained elsewhere, including in the Customer's documentation or any standard terms and conditions on any of Customer's purchase or similar orders, these Terms and Conditions, as supplemented by the Enrolment Form, duly accepted by SAP Africa, shall prevail over all contrary provisions, unless SAP Africa should specifically agree otherwise in writing.
- 1.8 SAP Africa shall be entitled to assume that any Enrolment Form received by it from Customer has been duly authorised by the Customer, unless the Customer shall have given SAP Africa prior written notice of the specific identity of its duly authorised representatives to the exclusion of all others.

2. TRAINING SERVICES AND COURSES

- 2.1 SAP Africa shall render the Services in a professional manner, in a safe environment, and in an atmosphere and venue conducive to effective instruction that shall be free from unnecessary interruptions, thereby endeavouring to ensure that Delegates of the Customer are enabled for effective learning.
- 2.2 The Customer hereby acknowledges and agrees that SAP Africa shall be entitled, at its option and in its discretion, to provide the Services itself or to appoint a third party service provider to render the Services provided that SAP Africa shall remain responsible for the proper performance of the Services by any such third party service provider.
- 2.3 The language of instruction shall be English and Courses shall be held at the venue, on the date and at the times notified by SAP Africa, as applicable, in its acceptance of the applicable Enrolment Form or otherwise.
- 2.4 Unless notified to the Customer to the contrary in writing, SAP Africa shall, at its cost, supply the necessary infrastructure and amenities incidental to the provision of the Services, including appropriate hardware, software, and refreshments unless the Services are to be rendered at the Customer's premises in which event, the Customer shall be liable and responsible for such infrastructure and amenities.

3. FEES AND PAYMENT TERMS

- 3.1 The fees and charges payable by the Customer to SAP Africa will be calculated at SAP Africa's applicable standard and usual fees and charges as published on SAP Africa's website from time to time, unless otherwise specifically quoted by SAP Africa.
- 3.2 Unless SAP Africa and the Customer have agreed in writing to different terms of payment:

- 3.2.1 all fees and charges, plus VAT thereon, shall be payable prior to the commencement of the Course in respect of which they are owed, Customer shall evidence proof of payment upon registration, failing which, SAP Africa shall be entitled to cancel the Customer's and its Delegate's participation in the Course, in whole or in part;
- 3.2.2 all amounts payable by the Customer shall be made free of deduction or set-off and payment shall only be deemed to have been received when SAP Africa receives cleared funds of the full amount owing by the Customer into its nominated bank account. Any postal authority, banker or other method of payment delivery shall be deemed to be the agent of the Customer; and
- 3.2.3 payments not received on due date shall be deemed late and overdue, notwithstanding that formal written demand has not been made by SAP Africa.
- 3.3 To avoid doubt, Customers who are non-residents of South Africa shall pay VAT at the prevailing rate on the fees and charges due in terms hereof unless a directive to the contrary is obtained by the Customer from the South African Revenue Services, and such directive is forwarded to SAP Africa prior to the commencement of the course.
- 3.4 The Fee payable by Customer will be invoiced in ZAR and payment must be made at the ruling exchange rate for ZAR to the applicable foreign currency on the date of invoice. The date of the invoice will be the date of commencement of the course or within a reasonable time after commencement of the course.
- 3.5 Any refund payable by SAP Africa to Customer shall likewise be made at the ruling exchange rate for ZAR to the applicable foreign currency on the date of payment.

4. COURSE MATERIALS

- 4.1 SAP Africa shall provide the Course materials to the Customer and/or to its Delegates as necessary and provide or make available to each Delegate, as appropriate, a preparation system and other applicable infrastructure and amenities.
- 4.2 The Customer and its Delegates shall have no rights in and to the Course materials and/or related materials save for the limited right to use the Course materials and related materials solely for the purposes of receiving the Services.
- 4.3 The Customer hereby irrevocably acknowledges that copyright subsists in:
 - 4.3.1 the Course materials;
 - 4.3.2 the preparation system, methodologies and techniques provided or made available by SAP Africa and its Licensors and their respective employees and other representatives to the Customer and/or its Delegates; and
 - 4.3.3 the SAP Software and other software, materials and products that are the subject matter of the Services to be provided to the Customer and/or its Delegates.

- 4.4 All copyright and other intellectual property rights in and to the Course materials or the related materials, or any part thereof, shall vest in SAP Africa as the author or authorised licensee and/or user thereof.
- 4.5 The Customer hereby acknowledges and agrees that SAP Africa shall be entitled to exercise and enforce all rights to copyright and other intellectual property rights in and to the Course materials and related materials.
- 4.6 The Customer and/or Delegates shall not use the Course materials or related materials for any purpose other than for receiving the Services.
- 4.7 To the extent that the Customer and/or its Delegates make any copies, recordings or derivative works of the Course materials, then copyright in all such copies and all such derivative works shall remain vested in SAP Africa and its Licensors and Customer and its Delegates may only use the Course materials for their own internal purposes and benefit.
- 4.8 The Customer shall not, save as is expressly provided for to the contrary herein, and it shall procure that its Delegates do not, copy, record or prepare derivative works, in whole or in part, of the Course materials and/or related materials and the Customer and its Delegates shall not disclose, use, make available, disseminate, exploit or otherwise utilise the Course materials and/or related materials except, and then only, for the purposes of Customer's internal and training purposes and/or for its Delegates' own purposes.

5. DELEGATES

- 5.1 Delegates shall enjoy the following rights (and assume the corresponding and concomitant obligations) and shall be entitled to receive instruction:
- 5.1.1 in a clean, safe and productive environment;
 - 5.1.2 with a suitable infrastructure and with appropriate amenities;
 - 5.1.3 by suitably experienced and knowledgeable instructors;
 - 5.1.4 in an open and interactive manner;
 - 5.1.5 without prejudice of whatever nature; and
 - 5.1.6 otherwise, in compliance with, and subject to, all applicable laws and regulations.

- 5.2 SAP Africa's Code of Conduct for Delegates and Certification Policy are available to Customer on SAP Africa's website. The Customer shall be responsible for downloading these documents and shall ensure that its Delegates comply with the provisions thereof. Should a Delegate breach a material provision of the Code of Conduct or Certification Policy, SAP Africa and its representatives, including a third party service provider, shall be entitled, after one verbal warning only, to demand that the Delegate be removed from the classroom and, depending upon the nature of the transgression, and/or from the applicable Course. Unless agreed otherwise, all fees paid in respect of such Delegate shall be forfeited or, if owing, shall be due and payable in the normal course.
- 5.3 Should a Delegate fail, for whatever reason, to attend a Course (in whole or in part), then the Customer shall, nevertheless, remain liable for the fees payable in respect of such Delegate.
- 5.4 If the Customer or its Delegate has misrepresented, on whatever basis that Delegate possesses prerequisite qualifications when, in fact, such Delegate does not possess such prerequisite qualifications, then SAP Africa shall be entitled to remove or suspend a Delegate's participation, or further participation, in such Course and Customer shall remain liable for the agreed fees.

6. CERTIFICATION

- 6.1 Should the Customer require its Delegates to obtain certification in respect of any Course, including Academy Courses, then:
- 6.1.1 such Delegates shall be obliged to attend the prescribed minimum number of modules or units or prerequisite Course;
 - 6.1.2 Delegates must register timeously for the applicable examinations;
 - 6.1.3 the provisions of this agreement shall apply *mutatis mutandis* to the booking, cancellation and attendance of any such examination; and
 - 6.1.4 the results of any such examinations will be communicated to the Delegate in the applicable manner and format, i.e. "failed" or "passed", as soon as possible, but no later than 2 business days upon completion of the examination.
- Should a Delegate fail the applicable examination on two consecutive occasions, such Delegate shall not again sit the examination without attending appropriate additional training and/or obtaining further experience in accordance with SAP Africa's standard policies in this regard.
- 6.2 Should the Services rendered be in the form of certification or examination Services, then SAP Africa shall make the results of such certification or examination available to the Customer in accordance with its applicable standard policies and procedures.

7. PREMISES

- 7.1 If the Services and Courses are to be rendered at SAP Africa's premises or other designated sites, then Customer shall, and shall ensure that its Delegates, comply with all applicable rules, procedures and other policies, including limitations to access, parking of motor vehicles, non-smoking laws and regulations, operation of equipment, including PC's and/or laptops, etc., applicable to such premises or sites.
- 7.2 Any equipment, utilities or other items made available to Customer and/or its Delegates while on SAP Africa's premises and/or other sites shall be returned to SAP Africa at the end of the Course in the same condition they were in at the commencement thereof, fair wear and tear alone accepted, and Customer shall be responsible and liable for all theft, loss, damage or destruction of any such equipment or items caused by the wrongful acts or omissions of Customer and/or its Delegates.

8. CANCELLATIONS

- 8.1 SAP Africa shall be entitled to cancel any Course (in whole or in part) should insufficient Delegates register for any such Course, for whatever reason, or any other circumstance occurs that is beyond the control of SAP Africa in which event, SAP Africa shall either credit or refund the Customer any fees paid in advance in respect of its Delegates. SAP Africa shall use all reasonable endeavours to reschedule such Course at the first available opportunity and notify the Customer of the details thereof.
- 8.2 Should the Customer cancel attendance by a Delegate or all of its Delegates of any Course, or any part thereof, the Customer will be liable to SAP Africa for the amounts as determined below. If written notice of any such cancellation is received by SAP Africa:
- 8.2.1 ten clear business days prior to the commencement of the Course or, in the case of Academy Courses, 15 clear business days, 100% of the fees, plus VAT thereon, then the Customer shall be entitled to a credit of 100% of any amounts paid;
- 8.2.2 less than ten, but more than three, clear business days prior to the commencement of the Course or, in the case of Academy Courses, at least seven clear business days, 50% of the fees, plus VAT thereon, then the Customer shall be liable for 50% of the amounts payable; and
- 8.2.3 less than three clear business days prior to the commencement of the Course or, in the case of Academy Courses, less than seven clear business days, then the Customer shall be liable for 100% of all amounts payable,
- provided that the Customer shall be entitled to substitute its Delegates with other suitably qualified Delegates upon prior written notice to SAP Africa.

9. LIMITATION OF LIABILITY

- 9.1 Save for refunds or credits expressly provided for in this agreement or as may be agreed in writing by SAP Africa, the Customer and/or its Delegates shall have no claim of whatsoever nature or howsoever arising against SAP Africa, its personnel or its third party service providers for any losses or damages sustained by the Customer and/or its Delegates, unless such loss or damages were caused by the fraudulent or criminal acts or omissions of SAP Africa.
- 9.2 Save for payment of any amounts due in terms of this agreement as read with the terms of a duly accepted Enrolment Form, including any penalty, forfeiture or other amount payable in terms hereof, the Customer and/or its Delegates shall not be liable to SAP Africa for any losses or damages of whatsoever nature or howsoever arising from the wrongful acts or omissions of the Customer and/or its Delegates, unless any such losses or damages were caused by the fraudulent or criminal acts or omissions of the Customer and/or its Delegates.
- 9.3 Each party ("the Indemnifying Party") hereby indemnifies and holds harmless the other party ("the Indemnified Party") against any claims made against the Indemnified Party by a third party arising from a breach by the Indemnifying Party of any of its rights and obligations arising out of this agreement or at law. Such indemnity shall include legal costs on the attorney and own client scale incurred by the Indemnified Party in defending and/or investigating any such claim.
- 9.4 The indemnity provided for herein shall be subject to the limitations provided for in this clause 9 and, in the event of a claim being brought against the Indemnified Party as contemplated above, the Indemnified Party shall (and the aforesaid indemnity shall be conditional upon the indemnified party):
- 9.4.1 promptly notify the Indemnifying Party of the nature of the claim;
 - 9.4.2 make no representation, statement or any admission of liability in respect of the claim on behalf of the Indemnifying Party;
 - 9.4.3 afford the Indemnifying Party all reasonable assistance, at the Indemnified Party's expense, to defend and/or settle any such claim; and
 - 9.4.4 allow the Indemnifying Party the sole right to settle or defend such claim as against the provision by the Indemnifying Party of appropriate security and indemnity for costs.

10. CONFIDENTIALITY

- 10.1 For the purposes of this clause, any person giving information shall be referred to as "the discloser" and any person receiving information shall be referred to as "the recipient". For the purposes of this clause, the phrase "personnel" or "employees" shall be deemed to include directors, personnel, agents, sub-contractors, consultants or other representatives of the recipient. Any breach of confidentiality by such persons shall be deemed to also be a breach of confidentiality by the recipient.
- 10.2 All information of a confidential nature, disclosed or made available by one party to the other in connection with this agreement, whether furnished verbally or in writing or in computer language, and whether marked with proprietary legend or not, shall constitute confidential, proprietary and trade secret information (collectively referred to as "the information") of the discloser, provided that there shall be excluded from such information any information that is, at the time of disclosure, already in the public domain otherwise than by breach of this agreement and there shall furthermore be excluded such information as the recipient is able to show was within its knowledge prior to the disclosure thereof provided that the parties agree and acknowledge that the presentation of the Course materials, the content thereof and the making available of the Course materials in hard or machine-readable format to Customers or their end users shall be deemed not to be a publication thereof.
- 10.3 The recipient shall at all times, unless otherwise agreed in writing by the discloser, hold the information furnished by the discloser in the strictest confidence and shall use such information solely in connection with the business association contemplated in this agreement. The recipient and its employees shall not copy or reproduce the information, in whole or in part, by any method whatsoever.
- 10.4 The recipient shall disclose such information only to its own employees, personnel and professional advisers as are strictly necessary for the purposes of discussions only, provided that prior to any such disclosure, such employees, personnel and professional advisers undertake in writing in favour of the discloser to be bound *mutatis mutandis* by the provisions of this clause.

11. FORCE MAJEURE

- 11.1 No party shall be liable for any failure to perform its obligations in connection with any action described in these Terms and Conditions, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond such party's reasonable control (including any mechanical, electronic, electrical or communications failure, but excluding failure caused by a party's financial condition or negligence).

12. ARBITRATION

- 12.1 Should any dispute of whatever nature arise between the parties, such dispute shall in the first instance be referred to senior management of the respective parties who shall meet, discuss and attempt, all the while observing the principles of good faith, to negotiate a settlement of such dispute failing which, such dispute shall be referred for determination by arbitration in accordance with the rules for expedited arbitrations of the Arbitration Foundation of Southern Africa (“AFSA”), and shall be held in Sandton, Gauteng unless both parties agree otherwise in writing.
- 12.2 It is the intention of the parties that, as far as possible, the arbitration shall be held and concluded within 10 days after either party has notified the other that such dispute cannot be resolved in accordance with 12.1 and should be referred to arbitration. The arbitrator shall be a person agreed upon by the parties or, failing such agreement, by the chairperson of AFSA. The arbitrator’s award shall be in writing and shall be final and binding upon the parties and, at the notice of either party, be capable of being made an order of a competent court.

13. GENERAL LEGAL PROVISIONS

- 13.1 No alteration of, variation of, or addition to this agreement or agreed cancellation thereof shall be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives.
- 13.2 This agreement contains the sole and entire record of the agreement between the parties in regard to the subject matter hereof. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of law.
- 13.3 No indulgence, leniency or extension of time that a party (“the grantor”) may grant or show to any other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 13.4 Neither party shall be entitled to assign this agreement, or to cede its rights or delegate its obligations arising herefrom without the prior written approval of the other party, which approval shall not be unreasonably withheld provided that SAP Africa shall be entitled to assign this agreement to its subsidiary, associate or ultimate holding company.