

KURA SOLUTIONS

LICENSE TERMS AND CONDITIONS



The following terms and conditions apply to the sale and use of all Kura Solutions Resource Packs (hereafter, 'KS Packs').

'KURA SOLUTIONS' (hereafter, 'KS') is a trading name of Kura Solutions Limited, a limited company registered with the New Zealand Companies Office.

'LICENSEE' is any organisation who purchases any KS Packs(s) under any type of KS license category. Any individual buying on behalf of an organisation is deemed to be acting as a representative of the organisation unless agreed in writing with KS. As a result, the organisation owns the rights to use the KS Pack, not the individual. The Licensee may not subcontract or otherwise assign their rights, obligations and responsibilities to any other party without the express consent of KS.

Acceptance of terms and conditions

Either the receipt of, download of, access of, use of, or payment for a KS Pack constitute use and is evidence of acceptance of these terms and conditions, whichever occurs earliest.

Receipt of electronic communication from KS containing a link to the latest version of our terms and conditions is deemed to be evidence of acceptance of the latest version of these terms and conditions, unless notification to the contrary is provided within five working days.

Any breach of these terms and conditions or subsequent versions shall cause the licensee to forfeit their rights to access and use KS Packs in any form. The Licensee shall not be entitled to any refund, or compensation for loss arising from the breach. KS reserves the right to recover any relevant damages and to seek a legal resolution at its sole discretion.

Licensee categories

The following licensee categories are covered under these terms and conditions. Upon purchase of a KS pack an organisation will be assigned a licensee category on the 'KS customer database' based on the descriptions below.

License Category Descriptions

SCHOOL

Any NZQA/MOE registered school offering classes from Year 7 to Year 13.

PRIVATE PROVIDER

Any NZQA registered private training establishment (PTE).

CUSTOM

Any NZQA registered Polytechnic/Institute of Technology, Government Training Establishment, Māori provider, Wananga, University, or Industry Training Organisation. Specific conditions for each organisation are agreed in writing between both parties on a case by case basis. If no agreement in writing exists at the time of purchase then the license category of 'PRIVATE PROVIDER' shall apply until the time a written agreement is in place.

CONTRACTOR

'Contractor' means an individual or organisation [NZQA accredited or non-accredited] that intends to use KS Packs with learners who are not enrolled in their own organisation. The Licensee may use KS Packs with an agreed number of learners at an agreed number of sites. Uploading any KS Packs on the organisation's on-line learning system is prohibited. Only those employed by the Contractor's organisation are permitted to teach the materials to non-enrolled learners. This license is subject to specific terms and conditions to be agreed in writing between both parties.

License types

A Licensee has the option of purchasing KS packs utilising one or more of the following license types at KS' sole discretion. Before purchasing KS Packs, the organisation is required to specify the license type(s) that it wishes to utilise for the purchase.

KS provides KS Packs under each of the following license types:

INDIVIDUAL MULTIPLE-USE KS PACKS

Single KS Packs that can be used multiple times for any students enrolled in that organisation as long as the NZQA version of the KS Pack purchased meets NZQA assessment requirements. Any changes to the version of the KS Pack purchased by the licensee type, and offered by KS, may incur an UPGRADE charge.

SERIES KS PACKS

Any combination of 'Individual Multiple-Use KS Packs'. Any changes to the version of any of the KS Packs purchased by the licensee type, and offered by KS, may incur an UPGRADE charge.

SUBSCRIPTIONS

The Licensee has access up to an agreed amount of KS Packs and KS E-files for a specified time for an annual fee. Only unit standards (unless agreed in writing) are available for this license type. If the Licensee does not renew their subscription, all usage rights of any subscription KS Packs and KS E-files are revoked immediately when their subscription period expires, and all subscription KS packs and KS E-files must be removed from the Licensee's organisation both physically and electronically. The date of expiry within selected KS Pack pdfs denote the license expiry and therefore notification by KS to the licensee of the subscription license expiry date is not required for the expiry to have affect.

INDIVIDUALISED PER STUDENT KS PACKS

Individualised student packs (including supporting teaching, learning, and assessment material), are for one-time usage only by the Licensee and must not be reused for any other student other than the one specified within the KS Pack.

Pricing plans

The pricing of any KS pack bought by a Licensee will be calculated by:

1. The Licensee category of the organisation; and
2. The license type that the organisation wishes to utilise.

KS reserves the right to change the pricing plan of any license type at any time. Discounts to the pricing plan may be applied for any organisation at any time at the sole discretion of KS.

Usage of KS packs

'KS Packs' means the content, format, form and combination of the resource materials made available for purchase under these terms and conditions. KS Packs may consist of an individual assessment, teaching or learning material, interactive pdf electronic files, online resources, supplementary materials, or any combination or variation of the above. Resource materials are supplied in secure electronic printable PDF format unless otherwise specified. This does not limit KS to providing resource materials in e-learning format and/or hard copy format and/or any other educational format dependent upon the pack purchased and license type. Materials supplied may or may not relate to specific NZQA Unit Standards and/or NZQA Achievement Standards.

'Content' includes but is not limited to text, definitions, questions, audio, video, electronic books, diagrams, formatting, computer files (e.g. MS Word files), images, interactive content, or any other material supplied in a KS Pack.

'Use' means use of the content of the KS Pack by learners enrolled in the organisation, and teachers employed by that organisation, provided that such use is in the format permitted by that license type.

The following applies to all KS Packs:

- a) Alteration of content under any license type is prohibited unless agreed on in writing between the organisation and KS. Additional usage fees may apply.
- b) KS Packs are to be used for enrolled New Zealand learners only. New Zealand learners mean any learners who are:
 - Resident in New Zealand (including New Zealand citizens, permanent residents, or others who are legally entitled to reside or study in New Zealand); or
 - New Zealand citizens who are living overseas who are enrolled in an NZQA accredited organisation.Licensees who wish to use KS Packs with learners (including online learning materials) who do not meet these criteria must obtain approval in writing from KS.
- c) KS Packs may only be distributed through NZQA accredited delivery sites legally owned and operated by the organisation. A delivery site (including teen parenting units, trade academies, and alternative education centres) are deemed to be owned and operated by an organisation if the delivery site is registered under the name of the organisation on the NZQA website. Any alterations to this clause may be agreed in writing by both parties.
- d) The Licensee may upload any KS Pack onto the school's secure 'Online Learning System' provided that only New Zealand learners enrolled at the Licensee's organisation have access to the KS Packs. 'Online Learning System' refers to any internet-based system used for the purposes of storing, accessing, distributing, and teaching KS Packs electronically. This includes but is not limited to Intranet systems, MOOCs, Google Drive, Dropbox, One Drive, YouTube, Google Classrooms, use on Apple, Android, on any other mobile devices, Moodle, Moodle docs, Wikispaces, or any other web-based learning technologies. KS does not warrant or imply that KS packs are suitable for an online learning environment or able to be customised in any way.
- e) KS Packs may not be made available, or copied, or on-sold, or distributed, or gifted, or emailed, or duplicated, or scanned, or shared, or otherwise be made available by any means or in any part to any other individual, or organisation, or party other than the Licensee. Any other distribution arrangement not covered in these terms and conditions must be agreed in writing by both parties.
- f) KS Packs are sold with a fourteen day right of return. The KS Pack may not be copied, stored or otherwise reproduced or distributed in any form by the Licensee if the fourteen days right of return is enacted. Any electronic KS Packs must be deleted from all storage mediums and may not be used, copied, stored, or otherwise reproduced or distributed.
- g) It is the responsibility of the licensee to ensure they have the correct NZQA accreditation to teach, assess and report credits on the national qualification framework for any KS packs purchased. The Licensee must use their own provider code to report credits.
- h) Access to any KS Packs is through electronic digital portals managed by KS. It is the responsibility of the licensee, or individuals acting as representatives for the organisation, to manage any access credentials and electronic links to these portals.

KS PACK E-FILE ADD ONS

Licensees may purchase KS 'E-files' for any KS Pack where KS E-files are offered. E-files are additional simplified MICROSOFT WORD versions of the Assessment and Learner Workbook within a KS Pack. Other WORD versions of resources within a KS Pack may be offered at the sole discretion of KS. The purpose of the E-files is to create distance and on-line learning opportunities for learners in conjunction with the KS Packs especially due to the COVID-19 Pandemic. E-files can only be purchased and used by a licensee if they have purchased a KS Pack under an individual multiple-use KS Pack or Subscriptions License. Design of the E-files mean that the WORD files supplied cannot be completed by learners, or used for moderation purposes, without also using the corresponding KS Pack secured pdfs. Therefore, any modifications of the E-files by the licensee must not be to the extent that the KS Pack pdfs are not required for learning and assessment purposes by the learner. All terms and conditions for a KS Pack also apply for any KS E-file purchased unless explicitly specified or varied in this agreement.

KS PACK PRE-PURCHASE INSPECTION SAMPLES

Any KS PACK pre-purchase inspection samples (including E-files) supplied must not be used for learning or assessment. Alteration, distribution, or copying of any sample content is prohibited. If no purchase is made by a licensee or potential licensee then any KS PACK pre-purchase inspection samples must be deleted and removed both physically and electronically.

Moderation guarantee

No guarantee is given that KS Packs will pass moderation by external standard setting agencies on every occasion. In the event that assessment materials fail to comply with the external standard requirements, KS will modify and replace the KS Pack free of charge, provided that:

- a) the Licensee has adequate internal moderation and quality control systems in place.
- b) no alterations have been made to the assessment materials.
- c) the KS Pack for the current version of the assessment standard authorised is under consideration.
- d) the Licensee supplies KS with a copy of the failed moderation report and copies of the assessment materials sent for moderation.

Upgrades

'UPGRADE' means any changes to a KS Pack due to an NZQA version change, failed NZQA moderation result, or internal KS modification. The Licensee must purchase any upgrade under the conditions and pricing plan of their license type.

- a) The offer of a discounted or free upgrade of any KS Pack is at the sole discretion of KS. The Licensee may be entitled under certain conditions, to a discounted or free upgrade if NZQA or KS publish a new version of the standard. It is the responsibility of the Licensee to redeem any upgrade within any specified timeframe offered. All upgrades are supplied electronically otherwise additional standard costs apply.
- b) All other upgrades will incur the relevant cost of the pricing plan for each Licensee type.
- c) Any subscription license type will have access to any upgrades free of charge provided that their license is current.

Marking and Reporting Services

KS is not an accredited provider and does not provide any formal assessment service for NZQA unit standards. It is the responsibility of the licensee to ensure they have the correct NZQA accreditation to teach, assess and report credits on the national qualification framework for any KS packs purchased. The Licensee must use their own provider code to report credits.

Terms of payment

For the purchase of any KS Packs under any customer license type, payment in full must be made by the 20th of the month following the date on which the resources are invoiced by KS. In addition to the purchase of the KS Pack, the Licensee shall be liable to meet the full cost of all additional charges such as freight and all government levies or taxes payable on the resource.

Copyright and intellectual property

All KS Packs in their original supplied format (or altered by the Licensee under agreement, such as for KS Pack E-files), are owned by KS and ownership of the copyright and intellectual property is NOT transferred as part of the purchase of any KS Pack License type. All copyright statements and brand identification tags must be retained in any altered material at all times unless specific permission has been given by KS in writing. This applies irrespective of the format the KS Packs were supplied in. Any documents from NZQA included in KS Packs are copyright to the New Zealand Qualifications Authority.

Consent to receive electronic messages

The Licensee grants permission to KS to contact them and their employees by means of electronic messages for the purpose of providing services which form a part of these terms and conditions. These services include, but are not limited to:

- quotations or updates to products and services
- new products or services
- the Licensee's KS Pack library
- KS related activities of customer support representatives.

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 have purchased a valid and current license for a KS Pack. KS shall not be liable for any product or service-related issues arising from the decision of the Licensee to unsubscribe from the electronic messaging service.

Dispute resolution

In the event that a dispute arises, every attempt will be made to resolve it as quickly and amicably as possible between the Manager of KS and the organisation's designated representative. In the event that the dispute cannot be resolved in this way, within a period of two months the matter will be referred to dispute resolution using an independent third party agreed by both parties. The mediation fee will be shared equally between the parties.

Uncontrollable events

'Uncontrollable Event' means an unpredictable event that is beyond the reasonable control of the party affected by the event (including where the Licensee has failed to make due payment because of an unpredictable event beyond their reasonable control). Neither KS nor the Licensee will be in default under this agreement if an obligation cannot be performed because of an uncontrollable event. Where KS or the Licensee is affected by an uncontrollable event, they must notify the other party of:

- a) the nature of the circumstances giving rise to the uncontrollable event;
- b) the extent of that party's inability to perform; and
- c) the likely duration of that non-performance
- d) all reasonable steps to remedy, or reduce the impact of, the uncontrollable event as soon as possible.

If KS or the Licensee is unable to perform an obligation under this agreement for 20 business days or more because of an uncontrollable event, both parties must seek to agree to what extent, if any, the obligation in question can be varied and or continued by the affected party. Failing agreement, KS or the Licensee may terminate this agreement after giving the other at least 20 business days prior written notice. In such cases, reimbursement, if any, will be negotiated on a case by case basis.

Disclaimer and limitation of liability

KS Packs are designed to support student learning, teaching and formal assessment. All reasonable efforts have been made to ensure that the KS Packs are of a suitable quality for commercial sale. KS does not make any warranty or assume any legal liability or responsibility for the accuracy, currency, or completeness of any information contained in any KS Pack. As a result, KS is not liable for any loss or damage directly or indirectly in connection with these conditions, the KS Pack, its use, and any other application. KS excludes liability for any consequential loss or damage which may arise in respect of the KS Pack or its use or for loss of profit, data, business revenue, education outcomes, goodwill, or anticipated savings. These exclusions of liability apply to all liability whether in contract and/or tort (including negligence) or otherwise. If notwithstanding these provisions, KS becomes liable for loss or damage that would otherwise have been excluded, the amount of liability KS agrees to will be limited to the amount of the license fee paid by the Licensee for the KS Pack.