

# KURA SOLUTIONS

## LICENCE 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 licence category. Any individual or agent buying on behalf of an organisation is deemed to be acting as an authorised representative of the organisation unless agreed in writing with KS. As a result, the organisation, not the individual, owns the rights to use the KS Pack. Only authorised/employed staff members of the Licensee can purchase KS Packs. The Licensee may not subcontract or otherwise assign their rights, obligations, and responsibilities to any other party without the express consent of KS.

'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 also be referred to as KS 'Resource Packs' or KS 'Resources' from time to time.

### 1) Acceptance of terms and conditions

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

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, unless required by New Zealand law. KS reserves the right to recover any relevant damages and to seek a legal resolution at its sole discretion.

### 2) KS packs

KS Packs may consist of an individual assessment, teaching and/or learning material, interactive PDF electronic files, online resources, supplementary materials, or any combination or variation of the aforementioned. 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 KS pack purchased and licence type. Materials supplied may or may not relate to specific NZQA Unit Standards, NZQA Skill 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. Microsoft 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 students enrolled in the organisation, and teachers or other authorised staff employed by that organisation, provided that such use is in the format permitted by that licence type. The Licensee must ensure that students do not access or receive any content from KS Packs that is confidential and intended for teachers and assessors only.

The following applies to all KS Packs:

- a) Alteration of content under any licence type is prohibited unless agreed in writing between the organisation and KS. Additional usage fees may apply.
- b) KS Packs are to be used for the teaching and assessment of enrolled New Zealand students only. 'New Zealand students' means any students 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 students (including online learning materials) who do not meet these criteria must obtain approval in writing from KS.

- c) KS Packs may only be licensed and distributed through NZQA accredited delivery sites legally owned and operated by the organisation. A delivery site (including teen parenting units, trade academies, health schools, alternative education centres, etc) 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 must 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 students 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, or 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 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 KS and the Licensee.
- 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 exercised. 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 (NQF) for any KS packs purchased. The Licensee must use their own provider code to report credits.
- h) Access to and downloading of any KS Packs is through an electronic digital portal managed by KS (the 'KS Portal'). It is the responsibility of the Licensee, or individuals acting as representatives for the organisation, to manage and keep confidential any access credentials and electronic links to the KS Portal. Only authorised and employed staff of selected NZQA accredited organisations are allowed to register and use the KS Portal in accordance with these Licence Terms and Conditions. Due to the confidential content within KS packs, which is intended for teachers and assessors only, no students of any organisation are authorised to register with or access the KS Portal at any time.
- i) KS reserves the right to formally withdraw any KS pack from purchase at any time. Where possible, adequate communication and timing of the withdrawal will be given to the Licensee to ensure minimal disruption. Once a KS pack has been withdrawn, any existing or previous version or edition of the KS Pack will no longer be maintained or guaranteed by KS for ongoing teaching, assessment, or moderation purposes.

### 3) KS pack e-files

E-files are additional simplified Microsoft Word versions of the Assessment and Learner Workbook provided within a KS Pack. Other Microsoft 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 online learning opportunities for students in conjunction with the KS Packs. E-files can only be purchased and used by a Licensee if they have purchased a KS Pack under an Individual Licence Multiple-Use KS Pack or Subscription Licence. Design of the E-files mean that the Microsoft Word files supplied cannot be completed by students, or used for moderation purposes, without also using the corresponding secured PDFs in the KS Pack. 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 student.

#### 4) 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 or kura 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, 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 licence category of 'PRIVATE PROVIDER' shall apply until the time a written agreement is in place.

###### CONTRACTOR

An NZQA accredited organisation that intends to use licensed KS Packs with students who are enrolled within another NZQA accredited organisation, but not enrolled in their own organisation. The Licensee may use KS Packs with an agreed number of unenrolled students but will be subject to specific terms and conditions to be agreed in writing between both KS and the Licensee. Any agreement may include additional licence fees. Uploading any KS Packs on the other organisation's online learning system is prohibited. Any NZQA assessment conditions and reporting of credits will be the responsibility of the contractor.

###### NON-NZQA ACCREDITED PROVIDERS

KS will not license any KS Packs to a non-NZQA accredited organisation. Any Licensee sub-contracting learning, teaching, and assessment of KS Packs for their enrolled students to a non-NZQA accredited organisation must ensure adherence to any relevant NZQA rules and regulations. The Licensee must also adhere to any conditions within these terms and conditions relating to the usage of any licensed KS packs by the non-accredited provider. Any arrangements should be in writing and be made available to KS on request.

#### 5) Licence types

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

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

###### SUBSCRIPTION LICENCE

For an annual fee, the Licensee has access up to an agreed number of KS Packs for a specified time. Only Unit Standards or Skill Standards (unless agreed in writing) are available for this licence type. If the Licensee does not renew their subscription, all usage rights of any subscription licence KS Packs are revoked immediately when their subscription period expires, and all subscription licence KS packs must be removed from the Licensee's organisation, both physically and electronically. The date of expiry within selected KS Pack PDFs denotes the licence expiry and therefore, notification by KS to the Licensee of the subscription licence expiry date is not required for the expiry to have affect. If the school continues to use any resources from an expired subscription past the subscription expiry date, the school will be deemed to have renewed their subscription and be liable to pay the annual subscription fee (or part thereof, as reasonable).

###### INDIVIDUAL LICENCE MULTIPLE-USE KS PACKS

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

### **SINGLE STUDENT LICENCE KS PACKS**

Single 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 than the one specified within the KS Pack. The student's first and last name and NSN number must be supplied for this licence type. Only Unit Standards or Skill Standards (unless agreed in writing) are available for this licence type. KS e-files are not provided for this licence type.

### **SERIES KS PACKS**

Series packs are any combination of 'Individual Licence Multiple-Use KS Packs'. Any changes to the NZQA version or KS edition of any of the KS Packs purchased by the Licensee, and offered by KS, may incur an UPGRADE charge.

## **6) 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 licence type that the organisation wishes to utilise.

KS reserves the right to change the pricing plan of any Licensee category and licence type for any individual Licensee at any time. Discounts to the pricing plan may be applied for any organisation at any time at the sole discretion of KS.

## **7) KS PACK PRE-PURCHASE INSPECTION SAMPLES**

Any KS Pack pre-purchase inspection samples (including any KS 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. Pre-purchase inspection samples may only be downloaded and viewed by authorised/employed staff members of the Licensee.

## **8) 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 affected KS Pack free of charge to the Licensee, provided that:

- a) the Licensee has adequate internal moderation and quality control systems in place
- b) the Licensee has performed any pre-assessment moderation requirements as required by their organisation's quality management system
- c) no alterations have been made to the assessment materials
- d) the KS Pack for the current version of the assessment standard authorised is under consideration
- e) the Licensee supplies KS with a copy of the failed moderation report and copies of the assessment materials sent for moderation
- f) the KS pack under consideration has not been formally withdrawn by KS.

## **9) 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 licence 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 or edition of the standard. It is the responsibility of the Licensee to redeem any upgrade within any specified timeframe offered.
- b) All other upgrades will incur the relevant cost of the pricing plan for each Licensee type.
- c) Any Subscription Licence type will have access to any upgrades free of charge, provided the upgrade occurs during the period that their licence is active.

### **10) Marking and Reporting Services**

KS does not provide any formal assessment marking/reporting service for NZQA 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 (NQF) for any KS packs purchased. The Licensee must use their own provider code to report credits. It is also the responsibility of the Licensee to ensure that they have effective management systems in place to ensure students do not repeat or double up on learning or assessment for a KS Pack if they have already gained credits for that standard.

### **11) Terms of payment**

For the purchase of any KS Packs under any customer licence type, payment in full must be made by the 20th of the month following the date on which the Licensee is 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.

### **12) 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 licence type. All copyright statements and brand identification tags must always be retained in any altered material, unless specific permission has been given in writing by KS. This applies irrespective of the format in which the KS Packs were supplied. Any documents from NZQA included in KS Packs are copyright to the New Zealand Qualifications Authority.

### **13) Consent to receive electronic messages**

The Licensee grants permission to KS to contact them and their employees or authorised representatives or agents 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 by 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 licence 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.

### **14) Dispute resolution**

In the event that a dispute arises, every attempt will be made to resolve it as quickly and amicably as possible between 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 mediation using an independent third party agreed by both parties. The mediation fee will be shared equally between the parties.

### **15) 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 payment due to 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 as soon as possible 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.

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 party at least 20 business days prior written notice. In such cases, reimbursement, if any, will be negotiated on a case-by-case basis.

### **16) 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 licence fee paid by the Licensee for the KS Pack.