

# Terms of Use

These Terms of Use are applicable to your access to and use of the websites, applications, and other online services operated by mSales . ("mSales," "our," "us," or "we"), including, but not limited to, <https://www.msalesapp.com>, that link to or incorporate these Terms of Use (the "Online Services"), and constitute a legal agreement between you and mSales. Your access to and use of the Online Services and the information and materials available through the Online Services are subject to these Terms of Use, regardless of whether you possess an account through the Online Services linked to your or your employees' or other end users' names and/or contact information ("Account"). By accessing or using the Online Services, you acknowledge that you understand and agree to be bound by these Terms of Use and to comply with all applicable laws and regulations when using the Online Services. If you do not understand or agree to be bound by these Terms of Use, do not access, use, or create an Account for any of the Online Services.

## 1. CHANGES TO THESE TERMS OF USE

We reserve the right to modify these Terms of Use, in whole or in part, in our own discretion at any time. Such modifications shall be effective immediately upon the linking of modified Terms of Use to the Online Services, and if you possess an Account, by communicating the modifications to you by sending them to the contact information that you have provided to us. You agree to comply with, and be bound by, any such modifications either (a) by continuing to use or access the Online Services after modified Terms of Use are posted to the Online Services or (b) if you possess an Account, by not requesting to terminate your Account within seven (7) days after being sent a notice of modifications as described above.

## 2. ONLINE SERVICES

### Ownership of Intellectual Property

All text, graphics, user interfaces, visual interfaces, photographs, videos, trademarks, logos, sounds, music, artwork, and computer code (collectively, "Content"), including, but not limited to, the design, structure, selection, coordination, expression, and arrangement of other Content, which is contained on the Online Services is owned, controlled, or licensed by or to mSales, and is protected by trade dress, copyright, patent, and trademark laws, and various other intellectual property rights and unfair competition laws. By granting you access to and use of the Online Services, mSales does not transfer any ownership rights in any Content found on the Online Services, and by furnishing information and materials through the Online Services.

mSales does not grant any licenses to any copyrights, patents, or any other intellectual property rights.

Except as expressly provided in these Terms of Use, no part of the Online Services and no Content may be copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted, or distributed in any way (including "mirroring") to any other computer, server, website, or other medium for publication or distribution or for any commercial enterprise, without mSales' express prior written consent. Notwithstanding the foregoing, you may view, use, download, and print selected portions of the Online Services solely for your own personal, non-commercial, informational use; provided that you do not republish such Content and that you keep intact all copyright, trademark, service mark, attribution, patent, and other proprietary notices.

The Online Services may contain other proprietary notices and copyright information, the terms of which must be observed and followed.

#### Accuracy of Content

You acknowledge that mSales has no duty or obligation to keep any Content on the Online Services accurate, current, or complete and agree that your reliance on any such Content is at your own risk. Although mSales

makes best efforts to maintain the accuracy of the Online Services, it does not represent or warrant that they are error-free.

Information that mSales publishes on the Online Services may contain references to mSales products, programs, and services that are not advertised or offered in your country. You acknowledge and agree that such references do not imply that mSales intends to offer such products, programs, or services in your country. Consult your local P mSales business contact for information regarding the products, programs, and services that are available to you.

#### Operation of the Online Services

We reserve the right, at our sole discretion, to do any of the following, at any time, for any reason or no reason, with or without prior notice, and without liability: (1) refuse, restrict, modify, suspend, or terminate operation of or your access to the Online Services, or any portion of the Online Services; (2) modify or change the Online Services, or any portion of the Online Services; and (3) interrupt the regular operation of the Online Services, or any portion of the Online Services, as necessary to perform routine or non-routine maintenance, to correct errors, or to make other changes to the Online Services. We may also make improvements or changes in the products or programs described in the Online Services at any time without notice.

### **3. USE OF ONLINE SERVICES**

#### User-Provided Content

You understand that all information, data, or other materials that you or another user provide in connection with the Online Services or otherwise communicate to us, including, but not limited to, content you provide using our e-mail services, social groups, forums, communities, calendars, and other messaging or other functions designed to enable you to post information to the Online Services or to communicate with others through the Online Services ("User-Provided Content"), is the sole responsibility of the person from whom such User-Provided Content originated. This means that you, and not us, are responsible for all User-Provided Content that you publish, post, upload, distribute, disseminate, or otherwise make available in connection with the Online Services. We do not control, monitor, or endorse User-Provided Content and, as such, do not guarantee the accuracy, integrity, or quality of any User-Provided Content. You understand that by using the Online Services, you may be exposed to User-Provided Content that is offensive, indecent, or objectionable. Under no circumstances will we be liable in any way for any User-Provided Content, including, but not limited to, for any errors or omissions in any User-Provided Content, or for any loss or damage of any kind incurred as a result of the publication or use of any User-Provided Content published, posted, uploaded, distributed, disseminated, or otherwise made available in connection with the Online Services.

mSales does not want to receive confidential, proprietary, or sensitive personal information from you through the Online Services. Please note that with the exception of submitted web-support requests and collaboration in Account-specific communities, any User-Provided Content you have submitted is NOT confidential. Always use caution when including any confidential, proprietary, or sensitive personally identifiable information through User-Provided Content that you submit, keeping in mind that mSales and in some instances other users of the Online Services will have access to your User-Provided Content.

#### Social Media Features

mSales' Online Services may use social media features, such as 'like' or 'share' buttons (collectively, "Social Media Services"). Social Media Services may collect IP address, visited page details, and set a cookie or pixel to enable the feature to function properly. Social Media Services are either hosted by a third party or hosted directly on mSales' Online Services. Your interactions with these features are governed by the privacy policy of the company providing the relevant Social Media Service.

Other content you post, or any other type of personal information that you make available to other participants on these social platforms or applications, is not subject to this Terms of Use. Rather, such content is subject to the terms of use of those applications or platforms, and any additional guidelines and privacy information provided in relation to their use, as well as the process by which you can remove your content from such tools or get help to do so. Please refer to them to better understand yours, mSales', and other parties' rights and obligations with regard to such content.

### Grant of License

By submitting any User-Provided Content to mSales (other than technical support requests and private account-specific community collaboration), you grant (or warrant that the owner of such rights has expressly granted) mSales a perpetual, royalty-free, irrevocable, nonexclusive right and license to use, reproduce, display, perform, modify, adapt, publish, transmit, create derivative works from, or distribute (or have distributed) such User-Provided Content in any form, medium, or technology now known or later developed without compensation to you, subject to our Privacy Statement. You represent and warrant that: (a) all "moral rights" that you may have in such User-Provided Content have been voluntarily waived by you and that mSales is free to use any ideas, concepts, know-how, or techniques that you submit to us for any purpose; and (b) all User-Provided Content that you submit is accurate, does not violate these Terms of Use, and will not cause injury to any person or entity. You also represent and warrant that you own or otherwise control all rights in and to any such User-Provided Content, and that our publication or use of your User-Provided Content will not infringe or violate the rights of any third party.

mSales reserves the right to use, review, change, condense, or delete any User-Provided Content, or to refuse to post any User-Provided Content on the Online Services, in its sole discretion. mSales does not guarantee that you will be able to edit or delete any User-Provided Content you have submitted.

### Prohibited Activities

You agree to comply with all laws and regulations applicable to your use of the Online Services. You agree not to publish, post, upload, distribute or otherwise make available any User-Provided Content:

- containing a solicitation of funds, a promotion, an advertisement, a solicitation to purchase goods or services, a solicitation of other users to use, join, or become a member of any commercial service or other organization, or any other commercial matter, unless the Online Service at issue specifically allows such User-Provided Content;

- that violates any law, statute, ordinance, or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, or false advertising);
- that is known by you to be false, inaccurate, or misleading or that is in our sole discretion harmful, threatening, abusive, inappropriate, profane, defamatory, vulgar, libellous, obscene, obscene as to minors, pornographic, racist, lewd, lascivious, filthy, excessively violent, harassing, indecent, unlawful, invasive of another's privacy, or otherwise objectionable;
- that infringes any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party or that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, or proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements); or
- that contains software viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment.
- abide by policies of third-party channels and social media properties where mSales maintains a branded presence.

In addition, you agree not to:

- defame, abuse, harass, stalk, threaten, or otherwise violate the legal rights (such as rights of privacy and publicity) of others;
- forge headers or otherwise manipulate identifiers in order to disguise the origin of any User-Provided Content transmitted in connection with the Online Services;
- create a false identity or create an Account for anyone other than yourself without permission;
- install any software, file, or code that is not authorized by the user of a computer or device or that assumes control of all or any part of the processing performed by a computer or device without the authorization of the user of the computer or device;
- take any action that interferes with the proper working of the Online Services, compromises the security of the Online Services, or otherwise damages the Online Services or any materials and information available through the Online Services or violates any code of conduct or other guidelines which may be applicable for any particular Online Service;
- attempt to gain unauthorized access to any portion or feature of the Online Services, to any other systems or networks connected to the Online Services, to any of our servers, or to any of the services offered on or through the

Online Services, including, but not limited to, by hacking, password “mining”, or any other unauthorized means;

- probe, scan, or test the vulnerability of the Online Services or any network connected to the Online Services or bypass the authentication measures on the Online Services or any network connected to the Online Services;
- use any automated means to collect information or content from or otherwise access the Online Services, including, but not limited to, through the use of technical tools known as robots, spiders, or scrapers, without our prior permission;
- falsify, delete, or modify any copyright management information or other program markings or notice of mSales’ proprietary rights, such as author attributions, legal notices, proprietary designations, or labels of the origin or source of software or other material contained in a file that is uploaded to the Online Services;
- harvest or otherwise collect and store information about other users of the Online Services, including e-mail addresses; or
- use, download, copy, or otherwise provide (whether or not for a fee) to a person or entity any directory of users of the Online Services or other user or usage information or any portion thereof.

Any materials uploaded to the Online Services may be subject to posted limitations on usage, reproduction, and/or dissemination; you are responsible for adhering to such limitations if you wish to use, reproduce, or disseminate the materials.

#### **4. ADDITIONAL TERMS OF USE FOR CERTAIN ONLINE SERVICES**

##### Documentation

Certain areas of the Online Services may contain formal and informal documentation relating to mSales’ products, along with materials drafted by third parties. Any mSales warranties as to its products’ conformance with specifications and documentation that may be found in your software license agreement apply ONLY TO the documentation that is provided to you in conjunction with the product. In the event of a conflict between formal documentation found on the Online Services and formal documentation provided to you with your product, the latter shall prevail.

##### Software Downloads

The Online Services may allow you, in certain areas, to download the software products of mSales provided that you have entered into a separate software license agreement, online or otherwise, under which you have been granted a license to such software products by mSales. Your license and use of, and rights and responsibilities for, any software downloaded through the Online Services will be

governed by the terms and conditions of such separate agreement and not by these Terms of Use.

### Confidentiality

By virtue of participation in certain areas of the Online Services, you may have access to information that is confidential to mSales ("Confidential Information").

"Confidential Information" shall mean all confidential and proprietary information of mSales, including, but not limited to, all ideas, techniques, models, inventions, know-how, processes, software programs, source code, trade secrets, and works of authorship relating to our current, future, and proposed products and services; customer, employee, and supplier lists; and any and all Content (including User-Provided Content) published on the Online Services by mSales or any user. As used herein, Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of a user; (b) was in a user's lawful possession prior to the disclosure and had not been obtained by the user either directly or indirectly from mSales; or (c) is lawfully disclosed to a user by a third party without restriction on disclosure.

You agree that you will, at all times: (a) take all steps reasonably necessary to hold the Confidential Information in trust and confidence; (b) not use the Confidential Information in any manner or for any purpose not expressly permitted by these Terms of Use or a separate written agreement between you and mSales; and (c) not disclose any such Confidential Information to any third party that is not a user without first obtaining mSales' express written consent on a case-by-case basis. You agree that these obligations and covenants are necessary and reasonable in order to protect mSales.

You shall ensure that the same degree of care is used to prevent the unauthorized use, dissemination, or publication of the Confidential Information as you use to protect your own confidential information of a like nature, but in no event shall the safeguards for protecting such Confidential Information be less than a reasonably prudent business would exercise under similar circumstances. You shall take prompt and appropriate action to prevent unauthorized use or disclosure of such Confidential Information.

### Registration and Passwords

The Online Services may permit or require you to register or obtain a password prior to permitting you to access certain portions of the Online Services. You acknowledge and agree that you are responsible for maintaining the confidentiality of your login ID and password, and are fully responsible for all activities that occur under your login ID or Account. Your password(s) are user-specific and may only be used by you. You agree to: (a) notify us immediately of any unauthorized use of your login ID,



password, or Account, or any other breach of security involving access to the Online Services through your Account; and (b) log out of your Account at the end of each session.

You acknowledge and agree that you cannot and will not attempt to hold us, our suppliers, affiliates, subsidiaries, joint ventures, third-party service providers, and our respective employees, contractors, agents, officers, and directors responsible for any liability, claims, or expenses arising from your failure to comply with this section.

## **5. YOUR PROVISION OF PERSONAL INFORMATION TO US**

### Account Opening

When you provide information about yourself to us, such as when you create an Account or through the careers portion of the Online Services, you agree to: (a) provide accurate, current, and complete information about yourself and your employer, and not to provide information that attempts to impersonate another individual; and (b) maintain and promptly update such information to keep it accurate, current, and complete. If you provide any such information that is untrue, inaccurate, or incomplete, or we have reasonable grounds to suspect that such information is untrue, inaccurate, or incomplete, we retain the right to suspend or terminate any Account you establish and/or to refuse any or all current or future use of the Online Services or any portion thereof.

### Privacy Statement

Our website privacy statement ("Privacy Statement") is a part of these Terms of Use and is incorporated herein by this reference. By accepting these Terms of Use you agree to our collection, use, and disclosure of your information as described in the Privacy Statement.

Click [here](#) to view the Privacy Statement.

## **6. LINKS TO OTHER WEBSITES AND ONLINE SERVICES**

The Online Services may contain links to third-party websites and applications for your convenience and information. mSales does not control those third-party websites and applications, and we do not endorse or make any representations about those third-party websites and applications. You acknowledge and agree that we are not responsible for the accuracy, copyright compliance, legality, decency, or any other aspect of such websites and applications that are not under our control, and that you will not hold us responsible for any harm that may arise based on your access to or use of any linked website or application.



## **7. DISCLAIMER OF WARRANTIES**

THE ONLINE SERVICES AND ALL INFORMATION AND CONTENT INCLUDED IN OR AVAILABLE THROUGH THE ONLINE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" FOR YOUR USE. THE ONLINE SERVICES AND ALL INFORMATION AND CONTENT INCLUDED IN OR AVAILABLE THROUGH THE ONLINE SERVICES ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. mSales DOES NOT WARRANT THAT THE INFORMATION AND CONTENT INCLUDED IN OR AVAILABLE THROUGH THE ONLINE SERVICES ARE ACCURATE, CURRENT, COMPLETE, OR ERROR-FREE; THAT THE ONLINE SERVICES WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; THAT THE ONLINE SERVICES ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR THAT ANY REPORTED PROBLEMS MAY BE RESOLVED WITH THE USE OF ANY INFORMATION THAT mSales PROVIDES THROUGH THE ONLINE SERVICES. YOUR USE OF THE ONLINE SERVICES IS AT YOUR SOLE RISK. BECAUSE SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES, THESE EXCLUSIONS MAY NOT APPLY TO YOU.

## **8. LIMITATION OF LIABILITY**

UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY YOU OR ANY THIRD PARTY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE ACCESS TO, USE OF, OR INABILITY TO USE THE ONLINE SERVICES. THIS LIMITATION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL THEORY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. INDEMNIFICATION**

You agree to defend, indemnify, and hold us, our suppliers, affiliates, subsidiaries, joint ventures, third-party service providers, and our respective employees, contractors, agents, officers, and directors harmless from any and all liability, claims, and expenses (including reasonable attorneys' fees) that arise out of or are related to your violation of these Terms of Use, your submission of any User-Provided Content, or your use of the Online Services, including the accuracy or completeness of any products, programs, and services received by you, or any data, information, service, report, analysis, or publication derived therefrom.

## **10. MISCELLANEOUS**

### Choice of Law and Jurisdiction

You agree that all matters relating to your access to, and use of, the Online Services shall be governed by the common law of Australian. All disputes arising under, out of, or in any way connected with these Terms of Use or your use of the Online Services shall be litigated in the courts in the state of Victoria, Australia, and you hereby submit to the personal jurisdiction of said courts and consent to the service of process, pleadings, and notices in connection with any and all actions initiated in said courts. You and mSales agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such action or proceeding, and that a final judgment in any such action or proceeding shall be conclusive and binding and may be enforced in any other jurisdictions. If you are a consumer based in the European Union, this preceding provision does not apply and you may make a claim in the courts of the country where you reside.

### Equitable Relief

You acknowledge that any breach or threatened breach of these Terms of Use will result in irreparable harm for which damages would not be an adequate remedy, and therefore that we are entitled to seek immediate equitable relief, including injunctive relief, in addition to our rights and remedies otherwise available at law. If we seek any equitable remedies, we shall not be precluded or prevented from seeking remedies at law, nor shall we be deemed to have made an election of remedies.

### Notices or Communication

You agree that mSales may provide any notice or communication to you required or permitted under these Terms of Use to any contact information you have provided to mSales, including, but not limited to, a mailing address or e-mail address.

### Severability

If any provision of these Terms of Use is held unenforceable or invalid under any applicable law or is so held by an applicable court decision, such unenforceability or invalidity will not render these Terms of Use unenforceable or invalid as a whole, and such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or the applicable court decisions.

### Waiver

Any waiver by us of a breach of any provision of these Terms of Use shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of these Terms of Use. Any such waiver must be in

writing. Failure by us to insist upon strict adherence to any term of these Terms of Use on one or more occasions shall not be considered a waiver or deprive us of the right to insist upon strict adherence to that term or any other term of these Terms of Use in the future.

### Assignment

You agree that you may not assign these Terms of Use or any interest herein including, but not limited to, by sublicensing or delegating any obligation hereunder, without the prior written consent of mSales.

### Entire Agreement

These Terms of Use constitute the entire agreement between you and us with respect to the subject matter contained herein and supersede all previous agreements, statements and understandings from or between you and us regarding the subject matter contained herein.

### Contact Us

If you have any questions or concerns about the Online Services or these Terms of Use, please [contact us](#).