

Smarter Drafter App Usage Terms: Published 12th February 2024

Welcome to Smarter Drafter! FluentDocs Pty Ltd trading as Smarter Drafter (ABN 16 163 715 428) ("Smarter Drafter", "We", "Us", "Our", or the "Company") provides online automated legal documents.

1 Agreement to these App Usage Terms

By accessing this application or database (this "Database" or "site"), you agree to be bound by these terms of use ("App Usage Terms"). These App Usage Terms constitute a binding agreement between you and Us and govern your use of this Database and include Our [Privacy Policy](#) which are incorporated by reference into these App Usage Terms.

2 Subscription Terms

(a) You, the Customer places an order for a subscription of one or more of the following products or services ("**Products**" and/or "**Services**"):

Product / Services	Description	Notes
Smarter Drafter Core	The base app and platform	This does not include the upgrades or additional modules
Upgrades or additional modules		
Court Documents	Automated court forms	
Marketplace	A marketplace of content provided by Smarter Drafter partners	
Smarter Drafter Essentials	The core Smarter Drafter precedent library and automations	
PMS integration	Integration of practice management system	
DMS integration	Integration of document management system	
Intake 2.0	Instruction taking forms which expedite the filling of Smarter Drafter automations	
E-Signatures	Provides the ability to send generated and custom documents to clients for digital signing	
Word plugin	The ability to open, edit and manage automatically generated documents within Microsoft Word	
Clause Bank	Ability to build and manage a bank of clauses for use in legal documents	
AI Tools	AI driven document summary and cover letter writing	

Smarter Drafter Author	The ability to create your own automations in Smarter Drafter	
eCommerce portal	An embedded web-page allowing clients to purchase off-the-shelf legal documents	(Now discontinued)

- (b) You acknowledge that the Products and/or Services are subject to change by Us or Our third-party suppliers from time to time by either replacement, removal or addition of Products and/or Services.

3 Orders, Subscription and Payments

3.1 Offers to treat

- (a) Information contained on Our Website constitutes an invitation to treat only. By placing an order to purchase any Products and/or Services, you make an irrevocable offer to Us to purchase the Products and/or Services.
- (b) Orders must be signed by an authorised representative of your firm. Your Order signifies acceptance by you of these App Usage Terms.
- (c) No information on Our Website constitutes an offer by Us to supply any Products and/or Services to you – however, the Company will endeavour to supply to you your selected Products and/or Services. We reserve the right in Our discretion, at any time:
- (i) Prior to your order being accepted to cancel all or part of your order; and/or
 - (ii) To refuse to provide Products and/or Services to you.

3.2 Processing of orders

- (a) We will not commence processing any order unless and until:
- (i) Payment details for the order has been received by Us in full; and
 - (ii) The order has passed Our internal validation procedures, which are undertaken in order to verify the bona fides of each order.
- (b) The Company may request further information from you, such as a copy of your credit card and/or other identification documentation, as part of Our internal validation procedures. Until your order has passed Our internal checks, your order will remain on pending status. If further information is requested and you do not provide the requested information, within such time as the Company considers appropriate in its discretion, your order will be cancelled and, if your payment has been received, it will be refunded back to you.
- (c) We will not be responsible for any damages, including consequential losses (whether direct or indirect), that may be suffered by a customer whose credit card is used in connection with an order but in a fraudulent or unauthorised manner.

3.3 Acceptance of orders

Acceptance of each order for the purchase of any Products and/or Services will be deemed to occur when the Company notifies you in writing (including by email) that the order has been accepted.

3.4 Free trial period

Some new customers may be provided with an initial free trial period, which, if granted, will not count toward the term of your subscription. We reserve the right to modify the duration of any trial and subscription, and during the trial period provide documents in PDF format and/or with watermarks. You may cancel your trial at any time during the trial period via the app.smarterdrafter.com.au menu. If you do not cancel prior to the end of the free trial period, you will be obliged to complete the term of your subscription and any amounts already paid will not be refunded to you. We reserve the right to terminate any unpaid trial at any time at Our absolute discretion.

3.5 Subscription

- (a) A subscription entitles you to use the Products and/or Services that you have subscribed to, for the number of users that you have subscribed for, for the subscription period and any renewal of that period.
- (b) From time to time at Our discretion, We may add new documents to the particular Products and/or Services you have subscribed to. We reserve the right to charge extra for certain new documents and where additional charges will be incurred, you will be given the option whether or not to include those new documents in your subscription.
- (c) You acknowledge and agree that access to Lexon documents is for Lexon clients only. If you or your firm is insured by Lexon, you shall be granted access after providing to Us an up to date certificate of currency. If your firm ceases to be a Lexon customer, you must inform Us immediately.

3.6 Authorised users

- (a) Your subscription includes access for the number of users as shown on Our pricing page or as amended from time to time. All users must be employees of your firm and have a current practicing certificate. If you wish to give access to any contractors/consultants, you must first obtain Our express written permission.
- (b) You acknowledge that sharing your login details is strictly prohibited. You covenant that you will not share your password, or login credentials to any other person. You acknowledge and agree that if the number of users increase or if We detect that you have shared your password, you will be charged for and will be liable to pay for those additional users.

3.7 12-month subscription periods

- (a) You acknowledge and agree that you are acquiring the Services for either a monthly or 12 month subscription ("term") and cannot cancel the subscription until that term expires.
- (b) All subscriptions, whether billed monthly or annually, will automatically renew for further term. To turn off automatic renewal or to change the Products and/or Services you will need to provide Us with written notice at least one (1) month before the end of the term.

- (c) Unless otherwise expressly agreed, Our standard pricing at the time of renewal will apply to the renewal of any additional term.

3.8 Price

- (a) You agree to pay to Us the price for the subscription that you have ordered, plus the price for any additional Users, and any Products and/or Services that you have acquired during the term within the time period set out on the invoice.
- (b) If you fail to pay the fees by the time specified on the invoice, We reserve Our right to cancel your access to the Products and/or Services; charge interest and charges in recovering the amount of the debt.
- (c) We may change Our fees and charges from time to time with 30 days prior notice or if you are on a subscription you will be notified of the change in the fees and charges before the renewal of the term. If you do not wish to proceed with any renewal or the subscription because of the price increase, you must provide Us with written notice at least one (1) month before the end of the term so We can ensure that you are not charged.

3.9 Payments

The Company uses a third-party payment processor to process orders. The processing of payments is also subject to the App Usage Terms and the policies of the third party payment processor. As of January 2024, Our primary payment processor is Stripe. We do not store your payment information on Our servers. Stripe collects your payment information and stores it securely on its servers. You may view Stripe's App Usage Terms and policies through the Stripe website (<https://stripe.com/au/>).

3.10 Refunds

Except as expressly provided otherwise in these App Usage Terms, all amounts paid for the Products and/or Services are non-refundable, nor are you permitted to set off any payment that is owing to Us.

4 File Formats and User Data

4.1 File formats for documents

All documents under the Smarter Drafter Core and any documents delivered under any upgrade or additional module you subscribe to, are delivered in both Word and PDF format. We reserve the right to provide documents in PDF format and/or with watermarks during trial periods or for any other purpose at Our discretion.

4.2 User Data

You acknowledge and agree that the Company, its employees or representatives may view your User Data from time to time for the purposes of providing support to you and evaluating future enhancement and improvement of Our Products and/or Services. The Company undertakes that it will not divulge any of your User Data to any third party for any purpose except where required by law; or to assist you; or to improve Our Products and/or Services.

5 Grant of Licence

5.1 Subject to these and your compliance with the App Usage Terms, We hereby grant to you a limited, personal, non-exclusive, non-transferable and non-sublicensable license during the term to:

- (a) Use the Software solely and exclusively for the Permitted Purpose, subject to and in accordance with the App Usage Terms;
- (b) Use and reproduce all User Documents in accordance with Our App Usage Terms, including if you are entitled to receive a User Document in MS Word format only make, alter or amend that User Document exclusively for the Permitted Purpose.

6 Restrictions on use

6.1 Use of Database, the Software and the Products and/or Services

- (a) By using the Database, the Software and the Products and/or Services you acknowledge and agree that:
 - (i) You are only permitted to use content that you receive through the Database while your subscription is active. Any use of content created through the Database after your subscription has expired will be a breach of copyright and legal action may be taken.
 - (ii) A document must never be forwarded to your client, without first undertaking a thorough legal review of that document, to ensure that it is fit for your client's purpose;
 - (iii) You have read, or will read Our disclaimers in respect to the use of documents (which is incorporated into these terms);
 - (iv) There shall be no reference to Us, or Our related or associated entities in respect to the documents that you create;
 - (v) You will only use the Software and any User Documents for the Permitted Purpose and in accordance with Our App Usage Terms;
 - (vi) You will not assign, sub-licence or otherwise deal in any other way with your rights under Our App Usage Terms without Our prior written consent;
 - (vii) You will only copy, reproduce, translate, adapt, vary or modify User Documents and create any derivative works in accordance with the App Usage Terms.
- (b) You must not:
 - (i) Use any device or software that interferes, or attempts to interfere, with the proper working of this Database or Software;
 - (ii) Use this site to decipher passwords or security encryption codes, transmit any worms, viruses or Trojan horses, transfer or store illegal, threatening or obscene material or otherwise violate the security of any computer network;
 - (iii) Use this site to violate any applicable local, state, national or international law; engage in fraud; malicious, misleading or deceptive conduct or encourage others to do so;

- (iv) Use any spider, robot or search/retrieval application or any screen scraping, data mining or similar data gathering device, process, program or means to access, retrieve or index any portion of this Database or Software;
- (v) Use this site to transmit junk mail, spam or chain letters or pyramid schemes or engage in other flooding techniques or mass distribution of unsolicited email;
- (vi) Interfere with any advertisements (if any) appearing on or in connection with this site;
- (vii) Reverse engineer, decompile, disassemble, adapt, modify, translate, frame or reformat any of the material contained on this site;
- (viii) Reproduce, duplicate, copy or store any of the material appearing on this site other than for the Permitted Purpose;
- (ix) Falsely imply that any other business or website is associated with the Company or this Database or Software;
- (x) Do anything that leads, or may lead, to a decrease in the value of the Company's Intellectual Property Rights;
- (xi) Use or exploit any of the material appearing on this site for, or in connection with, any business or enterprise (whether for profit or otherwise), including any business or enterprise that is in competition with the Company;
- (xii) Release to the public any news release, advertising material, promotional material or any other form of publicity or information relating to the Company without the Company's prior written consent; or
- (xiii) Use this Database or the Software to transmit any information or material that is, or may reasonably be considered to be:
 - i. abusive, threatening, harassing, harmful, obscene, indecent, lewd, inflammatory, violent, vulgar, profane, racially, ethnically or otherwise objectionable or offensive in any way;
 - ii. libellous, defamatory, unlawful or plagiarised;
 - iii. infringing upon, modify, remove or violating any copyright, trademark, patent or other intellectual property or proprietary right;
 - iv. in breach of any duty of confidentiality by which you are bound, whether by way of a fiduciary or contractual relationship;
 - v. in breach of any person's privacy or publicity rights;
 - vi. containing any political campaigning material, advertisements or solicitations; or
 - vii. likely to bring the Company; its associated entities or any of its directors or employees into disrepute or would or likely to damage the goodwill or the reputation of the Company.

6.2 Fair Use Policy

- (a) You agree to use the Database, the Software and the User Documents in accordance with Our following Fair Use Policy:
- (b) You agree not to
 - (i) Download a suite or a number of documents for the purposes of storing those documents on your own or a third parties device; or for which is not for immediate use; or is for any other purpose (other than the Permitted Purpose). We can determine if you use the Software or download a suite of documents contrary to the Permitted Purpose, which may subject you to the consequences of violation of these terms.
 - (ii) Engage in any action that requires, or may require, an unreasonable or excessively large load on Our infrastructure;

- (iii) Disclose your password(s) to any third party;
- (iv) Take or steal Our products or breach Our copyright;
- (v) Abuse or engage in conduct that, in the opinion of the Company at its sole and absolute discretion, indicates an intention to misuse and/or misappropriate the Software and/or the Products and/or Services; or any content or User Documents.

6.3 Violations of these App Usage Terms

- (a) Without limitation of those rights or any other remedy available to the Company at law or in equity, if We find or believe in Our discretion you have breached the App Usage Terms including any violation of the Fair Use Policy, the Database or the Software and the Company believes that your actions may cause damage and/or legal liability to the Company, its customers or suppliers or any other person, the Company reserves the right, without notice to you to:
 - (i) Seek injunctive relief and the right to sue for damages;
 - (ii) Temporarily or indefinitely suspend, limit or terminate your access to this site, or your subscription or refuse to provide Products and/or Services;
 - (iii) Remove or block access to any Product and/or Service; User Documentation (in whole or in part);
 - (iv) Limit your subscription (which, if your subscription would otherwise entitle you to receive User Documents in MS Word format, includes limiting your access to PDF versions only);
 - (v) Charge you additional subscription fees if your user information is shared with another person; and/or
 - (vi) Investigate and prosecute you for any theft; unauthorised use; costs; loss or expenses.

7 Intellectual property

7.1 Copyright

- (a) The Database is the property of FluentDocs Pty Ltd (ABN 16 163 715 428) or its licensors (as applicable) and is protected by Australian and international copyright laws.
- (b) Copyright in the works extends to the tens of thousands of variations of each document that the Software can produce across a huge range of fact scenarios, including prior content that has been superseded by the regular updates made by Us.
- (c) You must not reproduce, transmit, republish or prepare derivative works of the content on the Database, except as expressly authorised by these App Usage Terms or with the prior written consent of the Company or any other copyright owner (as applicable).

7.2 Trademarks

The name "Smarter Drafter" "Tensis" and "Rulestar" and the associated logos are Our trademarks. The look and feel of this and Our other sites (including all button icons, scripts, custom graphics and headers) are Our service marks, trademarks and/or branding. These trademarks, service marks and branding may not be used, copied or imitated, in whole or in part, without Our prior written consent.

7.3 Ownership of Intellectual Property Rights

- (a) You acknowledge and agree that:
- (i) Nothing in these App Usage Terms or the use of the Database or the Software transfers or assigns any Intellectual Property Rights to you.
 - (ii) We own and retain all Intellectual Property Rights in the Software and you have no Intellectual Property Rights in any part of the Software, including any modifications or enhancements thereof, other than the right to use the Software temporarily granted to you pursuant to these App Usage Terms.
 - (iii) We own and retain all Intellectual Property Rights in the User Documents and you have no Intellectual Property Rights or other rights in any part of the User Documents other than:
 - i. in respect of your User Data; and
 - ii. if you are entitled to receive a User Document in MS Word format, any further edits manually processed by you after the User Document has been delivered or made available to you by the Company, provided that such edits are processed for the Permitted Purpose.

8 Disclaimers, Warranties and Liability

8.1 Disclaimers

You acknowledge:

- (a) That by using the Database, the Software and the Products and/or Services, the Company providing this information is not a legal firm. You use this Database, the Software and the Products and/or Services at your own risk.
- (b) While We have used Our best endeavours to provide and update documents in accordance with changes in legislation as there are many different contingencies and interpretations of legislation and each situation and client has different requirements and Our documents have not been created solely for one particular client, the information does not purport to be complete and cannot be fit for your client's particular purposes.
- (c) You may use these documents, but they should not be the only matter that you consider, nor should the information be considered legal advice. Before using the Software, the Products and/or Services, We strongly recommend that you understand the legal and situational basis for selecting a certain inclusion in the documents. If you are uncertain, you should seek professional advice having regard to your client's objectives, situation and needs.
- (d) We disclaim any intent or obligation to update any particular clauses or provisions whether as a result of new information or otherwise.

8.2 Limit of Liability

- (a) To the maximum extent permitted by law:
 - (i) We and Our related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth)) and its directors, officers, employees, agents, consultants/contractors, licensors, partners and affiliates expressly disclaim all guarantees, representations and warranties (whether express or implied, statutory or otherwise); and
 - (ii) Are not responsible or liable for any cost, loss or damage of any kind whether it be consequential (including loss of profits or goodwill), indirect, incidental, special, punitive,

exemplary or otherwise and whether arising in contract, negligence, tort, equity, statute or otherwise), arising directly or indirectly out of, or in connection with the Database, the Software or the Products and/or Services, including:

- (A) Any use, download, reliance, acting or failing to act, on the Database, Software, Products and/or Services or any other information or material contained on or referred to or generated by the Database or the Software.
- (B) Any implied warranty of merchantability, fitness for a particular purpose (including that any document created through this site will be enforceable in any respect or will have any particular legal or commercial effect).
- (C) Any representation, warranty or guarantee as to the reliability, timeliness, quality, suitability, availability, accuracy or completeness of the Database, the Software and any Products and/or Services and that they will meet your requirements or expectations.
- (D) The use of the Software or the servers that make the Software available will be secure, uninterrupted, virus and error-free or operate in combination with any other hardware, software, system or data.
- (E) Any third-party website referred to in these App Usage Terms or linked to the Software, is reliable, accurate, complete or up-to-date.
- (F) That any errors or defects in the Database, the Software or the Products and/or Services will be corrected.

8.3 Remedies limited

- (a) Where Our liability cannot be limited or excluded, to the maximum extent permitted by law, We and Our related bodies corporate and its directors, officers, employees, agents, consultants/contractors, licensors, partners and affiliates expressly limit their liability for breach of any non-excludable condition or warranty implied by virtue of any legislation, in the Company's sole discretion:
 - (i) In the case of Products to either:
 - (A) the replacement of the goods or the supply of equivalent goods; or
 - (B) the payment of the cost of replacing the goods or of acquiring equivalent goods; and
 - (ii) In the case of services, to either:
 - (A) the supply of the services again;
 - (B) the payment of the cost of having the services supplied again.

9 User Representations, Warranties and Indemnity

9.1 User representations and warranties

- (a) You represent and warrant to Us and Our related bodies corporate and its directors, officers, employees, agents, consultants/contractors, licensors, partners and affiliates in respect of your use and/or reliance upon this Database and any Products and/or Services obtained through this Database, or through use of the Software that:
 - (iii) You acknowledge that Smarter Drafter and its associated entities is not a law firm and it and its employees and representatives cannot, and does not and shall not be

- relied upon as providing legal advice; legal representation or other legal services or soliciting to provide you legal services or creating a solicitor-client relationship.
- (iv) You acknowledge that you must carefully review and consider any document that you may acquire through the Database and the Software. You and your legal advisers should make your own independent review of such documents and you acknowledge and agree that you use the Software and any agreement or document that is generated by this Software at your own risk.
 - (v) You are acting on instructions from your client and have the legal knowledge and expertise or can source such knowledge and expertise required to prepare and use the Products and Services generated through the Database or the Software.
 - (vi) You have received and reviewed all information and relied upon your own investigations concerning such use/reliance as you consider necessary to enable you to make an informed decision and you understand that no reliance is placed upon any document, representation or warranty made, given or omitted to be made or given by or on behalf of the Company; and
 - (vii) You have such knowledge and experience in legal matters that you are capable of evaluating the merits of such use/reliance and you have completed that evaluation prior to any such use/reliance.

9.2 Waiver, Indemnity and release

- (a) You represent and warrant that by using this Software, you waive the right, and covenant not to bring, any claim, complaint, demand, proceeding, suit, litigation, action, cause of action or other legal recourse (whether in contract, tort, under statute or otherwise) that you have, or would otherwise have had, against Us and our associated entities and/or any of its directors, officers, employees, agents, consultants, licensors, partners and affiliates and you acknowledge and agree that this waiver and release may be pleaded as a bar and complete defence to any such claims.
- (b) You indemnify and hold harmless the Company and its directors, officers, employees, agents, consultants, licensors, partners and affiliates from and against any losses, liabilities, costs, expenses or damages (including actual, special, indirect and consequential losses or damages of every kind and nature, including all legal fees on a solicitor-client basis) suffered or incurred by any of them due to, arising out of, or in any way related to, whether directly or indirectly:
 - (i) any material or information that you submit, post, transmit or otherwise make available through the Database and the Software;
 - (ii) your use of or reliance upon any Products and/or Services; the Database and the Software;
 - (iii) your negligence or misconduct, breach of these App Usage Terms or violation of any law or the rights of any person.
- (c) You agree that the waiver and each indemnity provided above, continues to endure notwithstanding the termination of your subscription.

10 Force majeure

To the maximum extent permitted by law, and without limiting any other provision of these App Usage Terms, the Company excludes liability for any delay in performing any of its obligations under these App Usage Terms where such delay is caused by circumstances beyond the reasonable control of the Company, and the Company shall be entitled to a reasonable extension of time for the performance of such obligations.

11 GST

Unless otherwise expressly stated, all amounts payable in conjunction with these App Usage Terms and the Products and/or Services are expressed to be exclusive of GST. If GST is payable on a Taxable Supply, the amount payable for that Taxable Supply will be the amount expressed on this site plus GST. For these purposes, the terms "GST" and "Taxable Supply" have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

12 General

12.1 Costs

Except as specifically provided in these App Usage Terms, each party must bear its own legal, accounting and other costs associated with these App Usage Terms.

12.2 Assignment

- (a) You may not assign, transfer or subcontract any of your rights or obligations under these App Usage Terms without the Company's prior written consent. Where you request to assign or novate your rights and obligations We reserve the right to charge an Administration Charge for handling and preparing the paperwork associated with that assignment.
- (b) The Company may assign, transfer or subcontract any of its rights or obligations under these App Usage Terms at any time without notice to you.

12.3 No waiver

Waiver of any power or right under these App Usage Terms must be in writing signed by the party entitled to the benefit of that power or right and is effective only to the extent set out in that written waiver. Any failure by the Company to act with respect to a breach by you or others does not waive the Company's right to act with respect to that breach or any subsequent or similar breaches.

12.4 Severability

The provisions of these App Usage Terms are severable and, if any provision of these App Usage Terms is held to be illegal, invalid or unenforceable under present or future law, such provision may be removed and the remaining provisions shall be enforced.

12.5 Variation

The Company reserves the right to amend these App Usage Terms and any other policy on this site at any time in its sole discretion and any such changes will, unless otherwise noted, be effective immediately. Your continued usage of this site will mean you accept those

amendments. We reserve the right, without notice and in Our sole discretion, to change, suspend, discontinue, or impose limits on any aspect of this site, the content on this site or the Products and/or Services offered through this site. You may only vary or amend these App Usage Terms by written agreement with the Company.

12.6 Governing law and jurisdiction

These App Usage Terms will be governed by the laws of New South Wales, Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia and the courts of appeal from them.

13 Interpretation and Definitions

13.1 Interpretation

In these App Usage Terms, the following rules of interpretation apply:

- (a) headings are for reference purposes only and in no way define, limit or describe the scope or extent of any provision in these App Usage Terms;
- (b) these App Usage Terms may not be construed adversely against the Company solely because the Company prepared them;
- (c) a reference to Our App Usage Terms includes a reference to Our Privacy Policy;
- (d) the singular includes the plural and vice-versa;
- (e) a reference to a "person" includes an individual, a firm, a corporation, a body corporate, a partnership, an unincorporated body, an association, a government body or any other entity; and
- (f) the meaning of general words is not limited by specific examples introduced by "including", "for example", "in particular" or similar expressions.

13.2 Definitions

"Database" means the database or site that contains the Software; all of its content (including all of the text, graphics, designs, software, data, sound and video files and other information contained in this site, and the selection and arrangement thereof); and all software, systems and other information owned or used by the Company in connection with the Products and/or Services offered through this site (whether hosted on the same server as this site or otherwise).

"Intellectual Property Rights" means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know-how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application, in all parts of the world.

"Permitted Purpose" means the bona fide provision of legal services by you to an existing client of yours in a genuine and currently active matter.

"Software" means the Smarter Drafter software delivered to you by the Company or used or accessed by you pursuant to these App Usage Terms, including all online questionnaires, instructions, manuals, guidance and legal documents and all drafting and content comprised therein.

"User Content" means any and all content that is submitted, posted or otherwise added to this site by any person who uses this site.

"User Data" means all of the data that you upload into the Software, including all text and other data that you enter into any of the online document creation forms comprised in the Software.

"User Documents" means all of the legal documents generated by the Software and delivered or made available to you by the Company (including by email or in other electronic form) through your use of the Software.