

# Smarter Drafter – Self-Service Portal Terms of Usage Terms: Published 20<sup>th</sup> February 2024

## 1. Agreement to these Usage Terms

1.1 This Agreement provides for the use of FluentDocs Pty Ltd trading as Smarter Drafter (ABN 16 163 715 428) ("Smarter Drafter", "We", "Us", "Our", or the "Company")'s automated document retailing service ("Service"), using Our proprietary software ("Software"). The Software and the Service allows You ("You", "User") to embed Our automated documents onto Your website or platform and offer the documents for sale to Your clients. This service is or has been known by the following names:

- (a) Self-Service Portal
- (b) Retail Portal
- (c) E-Commerce Portal.

1.2 By using Our Software and Service, You acknowledge that You have read, understood, and agreed to be bound by these Usage Terms.

## 2. Embedding and Selling Documents

2.1 The Company provides the User with embed codes and Cascading Style Sheets ("CSS") that can be used to display and sell our automated documents on the User's website. You acknowledge and agree that customising the CSS is the Users responsibility.

2.2 Users may set prices for the automated documents at their discretion.

## 3. Document Review and Delivery

3.1 When a purchase is made through the User's website, the completed document will be sent to You for review in MS Word format before the document is sent to Your client.

3.2 The review of the document must be conducted by a lawyer with a valid practising certificate.

3.3 After the review is complete, You will send the reviewed document to Your client in PDF format only.

## 4. Confidentiality

4.1 You agree not to refer to Us or use Our name or trademarks, including referring to the name Fluentdocs, Tensis, Rulestar or Smarter Drafter or their trademarks, or make any reference to Us in any transaction, document, or in any of Your terms of use agreements related to the sale of automated documents.

## 5. Compliance with Legal Requirements

5.1 You agree to comply with all applicable laws and regulations related to the sale of automated documents and any other legal requirements necessary to protect the Company's interests.

## 6. User Responsibilities

6.1 You acknowledge and agree that:

- (a) You are responsible for ensuring the accuracy of the information provided on Your website, including pricing, descriptions, and any other relevant details.
- (b) You are responsible for resolving any disputes or issues that may arise between You and Your clients regarding the automated documents or any other service that You provide relating to the automated documents.

## 7. Ownership of Intellectual Property Rights

7.1 You acknowledge and agree that:

- (a) Nothing in these Terms or Conditions or the use of the Database or the Software transfers or assigns any Intellectual Property Rights to You.
- (b) 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 Usage Terms.
- (c) We own and retain all Intellectual Property Rights in the documents produced via the Software and the Service and You have no Intellectual Property Rights or other rights in any part of the documents other than:
  - (1) in respect of Your User data; and
  - (2) if You are entitled to receive a document in MS Word format, any further edits manually processed by You after the document has been delivered or made available to You by Us.

## 8. Termination

8.1 We reserve the right to terminate this Agreement and suspend Your access to the Software and Service at any time for:

- (a) any breach of these Usage Terms, or
- (b) if We in Our discretion reasonably believe that You will potentially breach these terms; or
- (c) for any other reason deemed necessary by Us, which may include but will not be limited to any failure by You to pay for the Service.

8.2 You may terminate Your subscription, whether billed monthly or annually:

- (a) by providing Us with written notice of at least one (1) week before the end of the term; or
- (b) where Our Usage Terms are to be varied or amended, and you do not agree with such variation or amendment, by providing Us with written notice at least one (1) week.

## 9. Disclaimers, Warranties and Liability

9.1 You acknowledge:

- (a) That by using the Software and the Services, the Company providing this information is not a legal firm. You use the Software and the 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; 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 purpose.
- (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 and the Services, We strongly recommend that You understand the legal and situational basis as to why Your client has selected a particular 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 and shall not be responsible or liable for:
  - (1) Any representation, warranty or guarantee as to the reliability, timeliness, quality, suitability, availability, accuracy or completeness of the Software and any Service and that they will meet your requirements or expectations;
  - (2) Any obligation to update any particular clauses or provisions in documents whether as a result of new information or otherwise;
  - (3) Any implied warranty of merchantability, fitness for a particular purpose (including that any document created through this Software will be enforceable in any respect or will have any particular legal or commercial effect);
  - (4) 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.
  - (5) Any third-party website referred to in these Usage Terms or linked to the Software, is reliable, accurate, complete or up-to-date.
- (e) You acknowledge that the promotional material that was produced relating to this Service, including any document, video or other promotional material, is for informational purposes and may be outdated and should not be relied upon as being representative of any timeline, quality or assurance of the Service. You agree that you will make your own investigation and queries, without reliance on the promotional material, on whether to subscribe for the Service.

## 9.2 Limit of Liability

- (a) To the maximum extent permitted by law:
  - (1) 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

- (2) 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 Software or the Service, including:
  - (i) Any use, download, reliance, acting or failing to act, on the Software, or the Services or any other information or material contained on or referred to or generated by the Software.
  - (ii) Any loss or damage caused by any viruses or any issue with the Software.
  - (iii) Any errors or defects in the Software or the Services.
  - (iv) Any matter so disclaimed in these Usage Terms.

9.3 Where Our Liability cannot be limited or excluded, to the maximum extent permitted by law:

- (a) We and Our related bodies corporate (and its directors, officers, employees, agents, consultants/contractors, licensors, partners and affiliates) expressly limit liability for breach of any non-excludable condition or warranty implied by virtue of any legislation, in the Company's sole discretion:
  - (1) In the case of any products generated by the Service to either:
    - (i) the replacement of the goods or the supply of equivalent goods; or
    - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; and
  - (2) In the case of the Services, to either:
    - (i) the supply of the Services again;
    - (ii) the payment of the cost of having the Services supplied again.

## 10. **General**

### 10.1 Governing Law

- (a) This Agreement shall be governed by and construed in accordance with the laws of New South Wales.

### 10.2 Assignment

- (a) You may not assign, transfer or subcontract any of Your rights or obligations under these Usage Terms without Our 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) We may assign, transfer or subcontract any of Our rights or obligations under these Usage Terms at any time without notice to You.

#### 10.3 No waiver

- (a) Waiver of any power or right under these 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.

#### 10.4 Severability

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

#### 10.5 Variation

- (a) The Company reserves the right to amend these 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.
- (b) We reserve the right, without notice and in Our sole discretion, to change, suspend, discontinue, or impose limits on any aspect of these Services.
- (c) You may only vary or amend these Usage Terms by written agreement with the Company.

#### 10.6 Force Majeure

- (a) To the maximum extent permitted by law, and without limiting any other provision of these Usage Terms, the Company excludes liability for any delay in performing any of its obligations under these 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.

#### 10.7 GST

- (a) Unless otherwise expressly stated, all amounts payable in conjunction with these Usage Terms and the Products and/or Services are expressed to be exclusive of GST.
- (b) 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.
- (c) 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).