

Terms and Conditions

These are the terms and conditions subject to which we allow you to use Our Website. By visiting or using Our Website, or make an order for Services, you agree to be bound by them.

Profiling Worx is a trading company located in South Africa.

Our address is Building 2, Beaulieu Office Park, cnr. Stallion and Papenfus Rd, Beaulieu, 1684, Johannesburg, Gauteng, South Africa.

You are: Anyone who uses Our Website or buys any Service from us in any circumstances.

It is now agreed as follows:

1. Definitions

“Device”	Includes a computer, any work station, electronic application or receiving device.
“Copy or Publish”	with reference to a Licensed Product, means reproducing or publishing in whole or in part, using any means, in any medium. It includes breaking up, changing, cropping or any other change or use as part of some other created work.
“Detailed Specification”	means the written specification of the Work you have instructed us to do, and which we will prepare for your approval.
“Documentation”	means the instruction manuals, user guides and other documentation which we have agreed to write.
“Future Deal”	means any agreement or arrangement made after today whereby we agree that you may use any system, material or item of Intellectual Property owned by us.
“Intellectual Property”	means intellectual property owned by us, of every sort, whether or not registered or registrable in any country, including intellectual property of all kinds coming into existence after today; and including,

among others, patents, trademarks, unregistered marks, designs, copyrights, software, domain names, discoveries, creations and inventions, together with all rights which are derived from those rights. It includes in particular the Know-how, software, systems and methods we may use to perform the Work for you.

“Know-how”	means methods, procedures and ways of working and organising which are not capable of protection as copyright.
“Licence”	means the licence granted by us to you in the terms of this agreement for use of the Licensed Product.
“Licence Fee”	means the sum or sums payable for the Licence from time to time.
“Licensed Product”	means any product, material or thing offered for licence by us on Our Website, including the Software, and whether or not bought by you. A reference to “Product” shall be a reference to all or part of a Licensed Product or to a Product changed by you in any way.
“Our Website”	means any website or service designed for electronic access by mobile or fixed devices which is owned or operated by us or any member of the Profiling Worx group of companies. It includes all of the hardware and software installations that enable our website to function.
“Services”	means all of the services available from Our Website, whether free or charged.
“Software”	means the software which constitutes the Licensed Product or which provides any electronic function which supports the use of the Licensed Product.
“Work”	means the work we do to provide the Services you have ordered.

2. Interpretation

Unless the context clearly requires otherwise, the interpretation of this agreement shall be subject to the matters listed below:

- 2.1. a reference to one gender shall include any or all genders and a reference to the singular may be interpreted where appropriate as a reference to the plural and vice versa.
- 2.2. a reference to a person includes a human individual, a corporate entity and any organisation which is managed or controlled as a unit.
- 2.3. a reference to a person includes reference to that person's successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as a result of a merger, division, reconstruction or other re-organisation involving that person.
- 2.4. in the context of permission, "may not" in connection with an action of yours, means "must not".
- 2.5. except where stated otherwise, any obligation of any person arising from this agreement may be performed by any other person.
- 2.6. any agreement by either party not to do or omit to do something includes an obligation not to allow some other person to do or omit to do that same thing.
- 2.7. a reference to an act or regulation includes new law of substantially the same intent as the act or regulation referred to.
- 2.8. in any indemnity, a reference to costs or expenses shall be construed as including the estimated cost of management time of the indemnified party, such cost calculated R 1 000 per hour, unless otherwise specified.
- 2.9. these terms and conditions apply to all supplies of Services by us to you. They prevail over any terms proposed by you.
- 2.10. this agreement is made only in the English language. If there is any conflict in meaning between the English language version of this agreement and any version or translation of this agreement in any other language, the English language version shall prevail.

3. Entire agreement

- 3.1. We represent, warrant and guarantee that we have the full right, power and authority to license and distribute the Licensed Products, including all the images, photos, animations, audio and video components, music, text, and additional applications incorporated into the Licensed Product and accompanying printed materials, if any.
- 3.2. If you use Our Website in any way and make an order on behalf of another person you warrant that you have full authority to do so and you accept personal responsibility for every act or omission by you.
- 3.3. You accept responsibility for compliance with the laws and importation procedures of your jurisdiction which might affect your right to import, export or use the Software and/or Assessments, and you represent that you have or will comply with all such laws and procedures.
- 3.4. This agreement contains the entire agreement between us and supersedes all previous agreements and understandings between the parties.
- 3.5. Conditions, warranties or other terms implied by statute or common law in any country are excluded from this agreement to the extent permitted by law.
- 3.6. In entering into this contract you have not relied on any representation or information from any source except the definition and explanation of the Services given on Our Website.

4. Basis of contract

- 4.1. Subject to these terms and conditions, we agree to complete the Work and to provide to you some or all of the Services described on Our Website at the prices we charge from time to time.
- 4.2. The contract between us comes into existence only when we write to you to confirm that we agree to provide to you the Service you want. Your payment does not create a contract. If we decline to provide a Service we shall immediately return your money to your credit card.
- 4.3. We do not offer the Services in all countries. We may refuse to provide Services if you live in a country we do not serve.
- 4.4. Some of our Services are now or may in future, be available to you only subject to additional terms. Those terms will be set out on Our

Website. You now agree that if you choose to use any such service, the relevant terms will become part of this agreement.

- 4.5. If we give you free access to a Service or feature on Our Website which is normally a charged feature, and that Service or feature is usually subject to additional contractual terms, you now agree that you will abide by those terms.
- 4.6. We may change this agreement and/or the way we provide the Services, at any time. If we do:
 - 4.6.1 the change will take effect when we post it on Our Website.
 - 4.6.2 you agree to be bound by any changes. If you do not agree to be bound by them, you should not use Our Website or the Services.
- 4.7. Our contract terminates on the earliest of:
 - 4.7.1 our completion of any Work for which you have paid us. If there is any doubt as to when this is, or was, then our decision is final;
 - 4.7.2 our having worked for the amount of time for which you have paid us, even if the Work is unfinished.
- 4.8. You do not become a client for the time when after completion of one piece of Work we start another. Each piece of Work is a new retainer which terminates when that Work is done. If we should give advice on the same subject at a later time, that advice constitutes a separate contract and does not retrospectively extend the first contract for our Services.
- 4.9. The price of any Service or Licence Fee may be changed by us at any time. We will never change a price so as to affect the price charged to you at the time when you buy that Service or Licensed Product.
- 4.10. There is no contract between us for any free Service, so you do not become a client by using any free Service and we are not liable to you in any way resulting from your use of any free Service.
- 4.11. You agree that you are bound by these terms (or the latest version of them) for all future contracts with us, whether ordered through Our Website or in some other way.

5. Price and payment

- 5.1. Prices for business Services are exclusive of any applicable value added tax or other sales tax. Prices for Services which you may buy as a South African client are inclusive of VAT.
- 5.2. Charges for Services are fixed whenever it is reasonably possible for us to ascertain the price.
- 5.3. When we do not provide fixed charges for the Service, we will charge by the hour. In that case all Work done, including all Documentation, letters, e-mails and telephone calls made and received will be charged on a time basis in minimum units of one sixth of an hour.
- 5.4. Estimates of charges will be provided to you wherever possible.
- 5.5. Payment will be due to us within 14 days of your receipt of our monthly invoice.
- 5.6. Payment may be made by credit card to Our Website, or by transfer to our bank account.
- 5.7. If we do not receive payment within the period required, we shall stop the Work until you have made your payment up to date.
- 5.8. It is possible that the price may have increased from that posted on Our Website. If that happens, we will not provide the Services until you have confirmed that you wish to order at the new price.
- 5.9. Bank charges by the receiving bank on payments to us will be borne by us. All other charges relating to payment in a currency other than Rand will be borne by you.
- 5.10. The Licence Fees and Assessment Fees are excluded in the charges for the Services and will be supplied separately.
- 5.11. Any details given by us in relation to exchange rates are approximate only and may vary from time to time.

6. If you buy as a consumer or private individual

This paragraph is not contractually part of this agreement. It is a statement of your rights as a consumer as defined in the Electronic Communications and Transactions Act 2002 .This paragraph applies to Assessments and Services you buy from us.

- 6.1. Subject to the further provisions below, if you cancel your contract within seven days of having made it, we shall refund your payment in full.
- 6.2. If it was urgent that we should start to provide the Services immediately after we received your order, and we did start them, we are obliged to refund to you only the pro rata proportion of the cost that relates to the incomplete portion of the Services;
- 6.3. You have no right to cancel a Service which has been drawn up to your order.
- 6.4. You have no right to cancel a Service which has been delivered to you via the Internet.
- 6.5. You have no right to return soft copy material contained in any medium unless it is apparent from the packaging that you have not accessed the contents.

7. Grant of Licence

- 7.1. We do not offer the Licence in all countries. We may refuse or revoke a Licence and return your payment if you live in a country we do not serve.
- 7.2. You acknowledge that Profiling Worx owns all right, title and interest in and to the Licensed Product and that you have no right to use it beyond the express terms of this agreement.
- 7.3. When using one of the Talentclick Assessments or Licenced Products you acknowledge that Talentclick owns all right, title and interest in and to the Licensed Product and that you have no right to use it beyond the express terms of this agreement.
- 7.4. Where a Licence Fee is applicable, the Licence shall be for one year, renewable annually, upon payment of the renewal fee.
- 7.5. If any renewal payment is not made before the annual renewal date, we may treat this agreement as having been terminated with effect from the renewal date. If that happens, the effect shall be the same as if the agreement had terminated by expiry of time.
- 7.6. The Licence is non-exclusive, non-assignable, non-transferable and otherwise as limited by the terms of this agreement.

- 7.7. No express or implied licence of the Licensed Product or any other material is granted to you other than the express Licence granted in this agreement.
- 7.8. If and whenever the parties agree to a Future Deal, the terms of this agreement shall apply so far as possible to that Future Deal as if a new version of this agreement had been made specifically for that Future Deal.
- 7.9. If any information you give to us is inaccurate, the Licence is automatically terminated and no refund of money will be due to you.

8. Restrictions on use of Licensed Product

You agree that you will not:

- 8.1. use the Licensed Product for any purpose or in any way except as you selected and paid when you bought it from Our Website. These restrictions may relate to limitations on use, territory, duration, or any other choice which defines the Licensed Product;
- 8.2. use a Licensed Product in part or as a whole, to incorporate it in any intellectual property of yours;
- 8.3. separate the component parts of the Software for use on more than one Device;
- 8.4. reverse engineer, decompile, or disassemble the Software and/or Assessments;
- 8.5. sub-license, rent out, lease, or lend the Software, Assessment or the Licensed Product;
- 8.6. Copy or Publish a Licensed Product except as specifically allowed in this agreement;
- 8.7. represent or give the impression that you are the owner or originator of any Licensed Product;
- 8.8. remove any identification or reference number or other information which may be embedded in any file of a Licensed Product.

9. Copying the Licensed Product

- 9.1. Every publication or appearance of a Licensed Product on a website must be protected as far as the law allows by separate, specific or general provisions against copying or publishing. We allow you to use the definition of “Copy or Publish” used in this agreement.
- 9.2. Despite the above limitations, you may copy a Licensed Product:
 - 9.2.1 once for the purpose of system maintenance or to show or share with some other person who has a business interest in it;
 - 9.2.2 to a contractor of yours whose contract is to work on the project or purpose for which you have bought the Licensed Product. In this case the Licence extends only to that project or purpose. If this happens, you remain liable to us in every way for the acts and omissions of your contractor. We advise you to obtain an appropriate agreement from your contractor to protect yourself in this regard.

10. Freedom to transfer

- 10.1. You may not assign, delegate, sub-contract, mortgage, charge or otherwise transfer any of your rights and obligations under this agreement without our prior written consent, except that you may assign and transfer all your rights and obligations under this agreement to any person to which you transfer all of your business, provided that the assignee undertakes in writing to us to be bound by your obligations under this agreement.

11. Service provision

- 11.1. The Services are listed and described on Our Website. Once you have indicated what services you require, we will contact you to clarify your exact needs and when we shall start, and complete our Work for you, as well as agree upon the payment terms.
- 11.2. The provision of our Service relies on a schedule of Work. If you are unable to provide us with acceptance or information we require for a period which extends the agreed timescale then we are entitled to payment in accordance with the schedule in any event.

- 11.3. If we are not able to provide your Services within 14 days of the date of your order, we shall notify you by e-mail to tell you the likely provision date.
- 11.4. If we have started to Work for you and you cancel this contract, you accept that you will be obliged to pay us for Work done, whether or not this Work is sufficiently advanced for you to be able to use it.
- 11.5. All monies paid by you to us for Assessments completed are non-refundable and cancellation and/or termination of this agreement by you or us at any time for any reason will not entitle you to a refund of monies paid.
- 11.6. You may not share or allow others to use the Services in your name.

12. Security of your credit card

We will take care to make Our Website safe for you to use.

- 12.1. Card payments are not processed through pages controlled by us. We use one or more online payment service providers who will encrypt your card or bank account details in a secure environment.
- 12.2. If you have asked us to remember your credit card details in readiness for your next purchase or subscription renewal, we will securely store your payment details on our systems. These details will be fully encrypted and used only to process your automatic annual payments or other transactions which you have initiated.

13. Indemnity

You agree to indemnify us against all costs, claims and expense arising directly or indirectly from:

- 13.1. your failure to comply with the law of any country;
- 13.2. your breach of this agreement;
- 13.3. any act, neglect or default by any agent, employee, you or your customer;
- 13.4. a contractual claim arising from your use of the Licensed Products or Assessment;

13.5. a breach of the intellectual property rights of any person.

14. Security of Our Website

If you violate Our Website we shall take legal action against you.

You now agree that it will not, and will not allow any other person to:

- 14.1. modify, copy, or cause damage or unintended effect to any portion of the Our Website, or any software used within it;
- 14.2. link to Our Website in any way that would cause the appearance or presentation of Our Website to be different from what would be seen by a user who accessed Our Website by typing the URL into a standard browser;
- 14.3. download any part of Our Website, without express written consent;
- 14.4. collect or use any product listings, descriptions, or prices;
- 14.5. aggregate, copy or duplicate in any manner any of the content or information available from Our Website, other than as permitted by this agreement or as is reasonably necessary for your use of our Services;
- 14.6. share with a third party any login credentials to Our Website.

15. Representative liaison

- 15.1. With effect from entering into this agreement or your acceptance of these terms and conditions we and you will each nominate a representative who will be authorised to make decisions relating to the Services you have ordered and who will be responsible for:
 - 15.1.1 organising monthly meetings at which they will review the progress of the Work;
 - 15.1.2 providing all information and Documentation reasonably required by either party to enable completion of the Work.
- 15.2. Each month our representative will prepare a progress report on the progress of the Work and will deliver a copy to your representative at least three days before each meeting.

16. Work management procedure

- 16.1. We shall prepare the Detailed Specification for your approval. It will be based on the description of the Service on Our Website.
- 16.2. You will within seven days of receipt of the Detailed Specification either approve or give us your further instructions for edit of it. If you fail to respond within that time period you will be deemed to have approved the Detailed Specification.
- 16.3. We shall take account of all reasonable comments and/or requests for amendment received from you and shall incorporate them in a revised version of the Detailed Specification to be prepared and delivered to you as soon as reasonably possible.
- 16.4. The process described above will be repeated until you have approved (or are deemed to have approved) the Detailed Specification.

17. Content of Detailed Specification

The Detailed Specification will include (among other things):

- 17.1. tasks, work and reports to be completed, along with expected timelines for each task, work or report.
- 17.2. details of each commonly accepted standard which will be attained in respect of the Work, where applicable, including those of the International Organization for Standardization.

18. Dissatisfaction with the Services

18.1. Our most important task is to ensure your absolute satisfaction. We will always strive to reach that target. However, we acknowledge that mistakes are made occasionally. This paragraph covers that possibility. If you are not wholly satisfied with the Service, please tell us at the earliest opportunity:

- 18.1.1 exactly why you think we have failed;
- 18.1.2 the date, if relevant, of the failure;
- 18.1.3 when and how you discovered the failure;
- 18.1.4 the result of the failure;

- 18.1.5 your suggestion as to action we should take to resolve the situation and restore your faith in us.
- 18.2. To do this, it is essential that you contact us by email at the contact point on Our Website.
- 18.3. You now agree that you commit a breach of this contract if you seek repayment of money paid to us by asking your credit card provider to credit back a payment made to us, without attempting to seek repayment from us first. In that event, you agree that you will owe us first the sum charged to us by our payment service provider and secondly a sum based on time spent R 1 000 per hour in dealing with your breach. You also agree that this provision is reasonable.

19. Confidentiality

- 19.1. We are both aware that in the course of our Work for you we will each have access to and be entrusted with information in respect of the business and operation of the other, all of which information is or may be confidential.
- 19.2. We both now undertake for ourselves and for every employee or sub-contractor whose services we may use both during and after completion of the Work, that we will not divulge to any person whatever or otherwise make use of (and will use their best endeavours to prevent the publication or disclosure of) any trade secret or confidential information.
- 19.3. For the purposes of your above undertaking, the information will be deemed to include all information (written or oral) concerning the Detailed Specification.
- 19.4. Each of us now undertakes to the other to make all relevant employees, agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such reasonable steps as will from time to time be necessary to ensure compliance by its employees, agents and sub-contractors with these provisions.
- 19.5. Each of us now undertakes to the other that for the period of 12 months following completion of the Work we will not directly or by an agent or otherwise and whether for ourselves or for the benefit of any other person induce or endeavour to induce any officer or employee of the other to leave his employment.

- 19.6. The provisions of the last previous sub paragraph will not apply to either party if the other becomes subject to bankruptcy, receivership or liquidation proceedings.

20. Intellectual Property

You agree that at all times you will:

- 20.1. not disclose to any person the method of working or the Intellectual Property involved in our Work for you;
- 20.2. not cause or permit anything which may damage or endanger our title to the Intellectual Property;
- 20.3. indemnify us for any loss or expense arising from your misuse of the Intellectual Property;
- 20.4. on the expiry or termination of this agreement immediately stop using the Intellectual Property except as expressly authorised by us in writing;
- 20.5. not use any name or mark similar to or capable of being confused with any name or mark of ours;
- 20.6. so far as concerns Software provided or made accessible by us to you, you will not:
- 20.6.1 copy, or make any change to any part of its code;
 - 20.6.2 use it in any way not anticipated by this agreement;
 - 20.6.3 give access to it to any other person than you, in this agreement;
 - 20.6.4 in any way provide any information about it to any other person or generally.

21. Disclaimers and limitation of liability

- 21.1. The law differs from one country to another. This paragraph applies so far as the applicable law allows.
- 21.2. All implied conditions, warranties and terms are excluded from this agreement. If in any jurisdiction an implied condition, warrant or term cannot be excluded, then this sub paragraph shall be deemed to be

reduced in effect, only to the extent necessary to release that specific condition, warranty or term.

21.3. We sell Licensed Products and Services in good faith. But we make no representation or warranty that any Licensed Product or Service will be:

21.3.1 useful to you;

21.3.2 of satisfactory quality;

21.3.3 fit for a particular purpose;

21.3.4 available or accessible, without interruption, or without error.

21.4. We claim no expert knowledge in any subject. We disclaim any obligation or liability to you arising directly or indirectly from information you take from Our Website.

21.5. We shall not be liable to you for any loss or expense arising out of or in connection with your use of Our Website, which is indirect or consequential loss, or economic loss or other loss of turnover, profits, business or goodwill. This applies whether in an action of contract, negligence or otherwise, even if such loss was reasonably foreseeable or we knew you might incur it.

21.6. We make no representation or warranty and accept no responsibility in law for:

21.6.1 malfunction in any hardware of yours;

21.6.2 malfunction in any Licensed Product provided by us unless you can prove that it was defective when you received it from us;

21.6.3 the provision or failure to provide any firewall;

21.6.4 accuracy of any Content or the impression or effect it gives;

21.6.5 delivery of Content, material or any message;

21.6.6 privacy of any transmission;

21.6.7 any act or omission of any person or the identity of any person who introduces himself to you through Our Website;

21.6.8 any aspect or characteristic of any goods or services advertised on Our Website;

- 21.7. Our Website includes Content Posted by third parties. We are not responsible for any such Content. If you come across any Content which offends you, please contact us via the "Contact us" page on Our Website.
- 21.8. We will do all we can to maintain access to Our Website, but it may be necessary for us to suspend all or part of our service for repairs, maintenance or other good reasons. We may do so without telling you first.
- 21.9. This paragraph (and any other paragraph which excludes or restricts our liability or provides an indemnity to us) applies to our directors, officers, employees, subcontractors, agents and affiliated companies, as well as to us.
- 21.10. If you become aware of any breach of any term of this agreement by any person, please tell us by email. We welcome your input but do not guarantee to agree with your judgement.
- 21.11. Nothing in this agreement excludes liability for a party's fraud.

22. Termination

This agreement may be terminated:

- 22.1. when the Work has been delivered to you or otherwise completed.
- 22.2. immediately by us if you fail to pay any additional sum due within 30 days of the date of submission of an invoice;
- 22.3. immediately by either party if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration or bankruptcy order (otherwise than for the purpose of an amalgamation or reconstruction).
- 22.4. any termination of this agreement by this paragraph will be without prejudice to any other rights or remedies to which a party may be entitled.

23. Miscellaneous matters

- 23.1. Our privacy policy is strong and precise. It complies fully with the current privacy law and is available on Our Website.
- 23.2. You undertake to provide to us your current land address, e-mail address and telephone numbers as often as they are changed together with all information that we may require to enable us to fulfil our obligations under this contract.
- 23.3. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it will be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it will be binding in that changed or reduced form. Subject to that, each provision will be interpreted as severable and will not in any way affect any other of these terms.
- 23.4. The rights and obligations of the parties set out in this agreement will pass to any permitted successor in title.
- 23.5. If you are in breach of any term of this agreement, we may:
 - 23.5.1 terminate your account and refuse access to Our Website;
 - 23.5.2 cancel any order at our discretion;
 - 23.5.3 issue a claim in any court.
- 23.6. Any obligation in this agreement intended to continue to have effect after termination or completion will so continue.
- 23.7. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
- 23.8. When you visit Our Website or send messages to us by email, you are communicating with us electronically. We communicate with you by e-mail or by posting notices on Our Website. You agree that all our electronic communications satisfy any legal requirement that such communications be in writing.
- 23.9. Any communication to be served on either party by the other will be delivered by hand or sent by fastmail service or recorded delivery or by e-mail.

It shall be deemed to have been delivered:

if delivered by hand: on the day of delivery;

if sent by post to the correct address: within 72 hours of posting;

If sent by e-mail to the address from which the receiving party has last sent e-mail: within 24 hours if no notice of non-receipt has been received by the sender.

23.10. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.

23.11. So far as the law permits, and unless otherwise stated, this agreement does not give any right to any third party.

23.12. Neither party will be liable for any failure or delay in performance of this agreement which is caused by circumstances beyond its reasonable control, including any labour dispute between a party and its employees.

23.13. The validity, construction and performance of this agreement will be governed by the laws of the Republic of South Africa and you agree that any dispute arising from it shall be litigated only in that country.