

TERMS AND CONDITIONS FOR USE OF CHEMWATCH SOFTWARE

1. Definitions

- 1.1 "Conditions"/"Terms"/"Terms and Conditions" means these trading terms and conditions forming part of this agreement;
- 1.2 "Chemwatch" means Ucorp Pty Ltd trading as Chemwatch (ABN 38 062 768 094), the provider of the GoldFFx chemical management software and SmartSuite (mobile application).
- 1.3 "Customer" means MTA WA employee, Member and Host Employer.
- 1.4 "GoldFFx Software" means the chemical management software provided by Chemwatch, including any updates or modifications.
- 1.5 "Host Employer" refers to an employer who employs one or more apprentices through MTA WA Training Inc.
- 1.6 "Intellectual Property Rights" means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, moral rights, inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields
- 1.7 "Member" refers to any entity or individual who is a current member of MTAWA, as that term is defined in the Constitution of MTAWA.
- 1.8 "MTAWA" means the Motor Trades Association of Western Australia Inc and its related entities.
- 1.9 "SmartSuite" means the mobile application software component of the GoldFFx Chemical Management System + SmartSuite.
- 1.10 "Software" means the SmartSuite and the GoldFFx Chemical Management System.
- 1.11 In these Terms, the expressions "we", "us" and "our" refers to MTAWA.
- 1.12 In these Terms, the expressions "you" and "your" refers to you as a user of the Software.

2. Access to Chemwatch Management System

- 2.1 MTA WA members and Host Employers shall receive access to the GoldFFx Chemical Management System and SmartSuite mobile application on the terms and conditions set out herein.
- 2.2 By agreeing to these terms, and by continuing to access to and use the Software, you accept and agree to be bound by these Terms.
- 2.3 You acknowledge that you will comply with these Terms and that, MTAWA may remove or suspend your access to the Software for any reason whatsoever, including in the event that you breach these Terms.
- 2.4 You acknowledge that the Software is provided to you by Chemwatch and that any queries in relation to the Software or any assistance in relation to the use of the Software shall be directed to Chemwatch.
- 2.5 You acknowledge that Chemwatch may, from time to time, interrupt access to the Software and that access to the Software may also be interrupted for many reasons beyond the control of Chemwatch.

3. Technical Support

- 3.1 You agree that it is your responsibility to set up and familiarise yourself with the use of the Software and that MTAWA shall not be obliged to provide any assistance with respect to that.
- 3.2 Chemwatch have agreed to provide technical support for the Services 24/7. Support will consist of maintenance of the functioning software and providing assistance to users to ensure your access to the Software.
- 3.3 You agree that should you require any assistance with respect to the Software you shall contact Chemwatch directly in relation to that assistance.

4. Intellectual property

- 4.1 The Software and its content are subject to Intellectual Property Rights. These Intellectual Property Rights are owned by Chemwatch.
- 4.2 The Customer agrees and acknowledges that:
 - 4.2.1 the Software (including all updates, new versions and modifications made thereto) and all Intellectual Property Rights in the Software (including all updates, new versions and modifications made thereto) shall remain owned by, and vested in Chemwatch absolutely as the sole and exclusive owner; and
 - 4.2.2 MTAWA has been granted a non-exclusive, non-transferable, revocable licence to permit MTAWA Members, employees and host employers to use the Software for the licensed term for the sole purpose of assisting in maintaining a hazardous substance register with up-to-date safety data sheets for so long as MTAWA has the licence and the Member, employees and host employer comply with this agreement.
- 4.3 The licence described above does not allow you to, or permit or allow any of your officers, employees, contractors, agents or representatives or any other third party to:
 - 4.3.1 copy, alter, reproduce, translate, adapt, vary or modify the Software;
 - 4.3.2 merge all or any part of the Software with any other software or documentation;
 - 4.3.3 reverse assemble or reverse compile, or directly or indirectly allow or cause a third party to reverse assemble or reverse compile, in whole or part, the Software; or
 - 4.3.4 repackage, distribute, rent, lease, sell, charge, sub-licence, assign, transfer or otherwise deal with or exploit the Software.
- 4.4 The Software may also include registered trademarks and other marks that are otherwise protected by law. You must not reproduce, transmit, communicate, adapt, distribute, sell, modify, publish or otherwise use our, or any third party's trademarks, without the respective party's consent.

5. System and Network Security

- 5.1 You agree that you will not, and you will not allow any other person to, violate or attempt to violate any aspect of the security of Chemwatch's systems.
- 5.2 You understand that any such violation is unlawful in many jurisdictions and that any contravention of law may result in criminal prosecution.
- 5.3 Examples of violations which you are not permitted to do include, but are not limited to:
 - 5.3.1 accessing data unlawfully or without consent;
 - 5.3.2 attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures;
 - 5.3.3 attempting to interfere with service to any user, host or network, including, without limitation, via means of overloading, "flooding", "mail bombing" or "crashing";
 - 5.3.4 forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting; and
 - 5.3.5 taking any action in order to obtain services to which you are not entitled.

6. Limitation of Liability

- 6.1 To the greatest extent permissible by law, MTAWA does not provide any warranty in connection with the Software and does not represent that the Software is suitable for your use.
- 6.2 We exclude to the fullest extent possible under Law, all implied terms and warranties whether statutory or otherwise, relating to the Software.
- 6.3 Any advice, recommendation, information or representation provided by us as to the quality or performance of the Software is given in good faith but without any liability or responsibility on our part. You acknowledge you have not relied upon or been induced by our representations.
- 6.4 To the fullest extent permissible at law, we disclaim and you release us from all responsibility for any damages or losses (including, without limitation, financial loss, damages for loss in business projects, loss of profits or other economic losses) whether arising in contract, tort or otherwise

from the use of, or inability to use, this Software, or any material appearing on this Software, or from any action or decision taken as a result of using this Software or any such material.

6.5 To the greatest extent permissible by law, MTAWA shall not be liable to you for any indirect, consequential, exemplary, incidental or punitive damages, including lost profits, even if MTAWA has been advised of the possibility of such damages.

7. Warranty and Indemnity

7.1 You warrant that you will use the Software in accordance with these Terms and comply with all laws in doing so.

7.2 You agree to indemnify and hold MTAWA, its officers, directors, shareholders, employees, agents, subsidiaries and affiliates harmless, against any breaches, demands, loss, liability, claims or expenses (including legal fees), made by you or against MTAWA by any third party due to or arising out of or in connection with your use of the Software.

7.3 You further agree to indemnify MTAWA in relation to any claim that may be made by Chemwatch or any other party in relation to your use of the Software, your breach of these Terms or your breach of any other laws or rights of any third party relating to the use of the Software.

8. Privacy

You agree that Chemwatch may disclose your including assigned IP numbers, account history, account use, and so forth to any judicial or proper legal authority who makes a written request without further consent or notification to you.

9. Termination

We may at our discretion, at any time and without notice, terminate or suspend the agreement for access to the Software:

- (i) immediately upon you ceasing to be a Member of MTAWA, employee, or ceasing acting as a Host Employer;
- (ii) immediately if we believe you have breached these Terms; and/or
- (iii) on 48 hours' notice for convenience at any time upon us notifying you of the same;

10. Force majeure

Neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control including acts of God, fire, natural disaster, pandemic, war or military hostilities and strikes of its own employees, and in such a situation:

10.1 Each of the parties agrees to give notice immediately to the other upon becoming aware of an event of force majeure, such notice to contain details of the circumstances giving rise to it.

10.2 If a default due to force majeure continues for more than 2 weeks, the party not in default shall be entitled to terminate this agreement. Neither party shall have any liability to the other in respect of the termination of this agreement as a result of force majeure.

11. General

11.1 In the event that any provision of these Terms is determined to be unlawful, void or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms, such determination shall not affect the validity of any other remaining provisions.

11.2 These Terms are governed by the law applicable in Western Australia, and where applicable, Commonwealth of Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

11.3 No waiver by us of any default of yours under these Terms shall operate or be construed as a waiver by us of any future defaults, whether of a like or different character. No granting of time

or other forbearance or indulgence by us to you shall in any way release, discharge or otherwise affect your liability under these Terms.

- 11.4 Unless otherwise stated within these Terms, notices to be given to either party shall be in writing and shall be delivered by email or by registered post to the contact addresses provided herein.