

# Virtual-IT

## Suppliers of Learner Management Systems

### TERMS AND CONDITIONS OF PURCHASE DEVELOPMENT AND HOSTING

#### Definitions

Please read these terms and conditions carefully as they apply to your use of any "Virtual-IT" Product or Service.

In these terms and conditions, the words defined shall have the meanings assigned to them hereunder:

The Company shall mean Learning Management Software cc (CK 1999/009035/23), formerly known as Bush Computer Training cc trading as Virtual-IT. The products shall mean all products, services and development sold by the product name of Virtual-IT;

"Virtual-IT" shall mean "Learning Management Software cc" t/a Virtual-IT.

'the Purchaser/Renter' shall mean the person, partnership, firm, association, close corporation, or company purchasing or renting any Product or Service from "Virtual-IT". The term Renter will also include Clients using our eLearning services.

'the parties' shall mean "Virtual-IT" and the Purchaser/Renter collectively.

Headings and clauses shall be deemed to have been included for purposes of convenience only and shall not affect the interpretation of the agreement.

Unless inconsistent with the context of the words relating to any gender shall include, the other gender, words relating to the singular shall include the plural and vice versa, and words relating to natural persons shall include associations of persons having corporate status of common law.

We may update the Terms and Conditions from time to time without notice to you. The Purchaser/Renter agrees to review this agreement periodically to be aware of any modifications to the agreement which "Virtual-IT" may make at any time. You can review the most current version of the Terms and Conditions at any time on our Web Site: [www.virtual-it.co.za](http://www.virtual-it.co.za). It is your responsibility to check these Terms and Conditions regularly to ensure that you agree with them. If you do not agree with any of these Terms and Conditions, you may make known your objections by communicating them, in writing, to any of the contact addresses below.

Should you breach any of these Terms and Conditions, you will be solely responsible for any damages, liabilities or claims arising because of your actions.

Please submit any query in respect of these Terms & Conditions or the use of our Products or Services to us in any of the following ways:

Email: [info@virtual-it.co.za](mailto:info@virtual-it.co.za)  
Postal: P O Box 521, Umkomaas, 4170

Other Contact Addresses:

Support: [support@virtual-it.co.za](mailto:support@virtual-it.co.za)  
Accounts: [accounts@virtual-it.co.za](mailto:accounts@virtual-it.co.za)  
Sales: [sales@virtual-it.co.za](mailto:sales@virtual-it.co.za)

#### Application of Conditions

All and any business undertaken by "Virtual-IT" is and shall be subject to the conditions hereinafter set out and each condition shall be deemed to be incorporated in and to be a condition of any agreement between "Virtual-IT" and the Purchaser/Renter. The Purchaser/Renter agrees they have read, understood, and agrees to these terms.

## **Reservation of Ownership**

The parties agree that this contract is subject to the express condition that ownership in products shall remain vested in "Virtual-IT" and that all modifications, additions and/or developments, of any kind, must be undertaken "Virtual-IT personnel.

Notwithstanding the reservation of ownership as aforesaid, all risk shall pass to the Purchaser/Renter upon delivery of Products to the Purchaser/Renter or his agent, by rail, post, electronic transfer, internet links or to any other carrier for dispatch to the Purchaser/Renter, at which time the "Virtual-IT" 's responsibility will cease and the articles will be deemed to have been delivered to the Purchaser/Renter.

Until the Purchaser/Renter has paid the amount due by him to "Virtual-IT" in full, the Purchaser/Renter hereby appoints "Virtual-IT" as his agent in rem suam in so far as the same may be necessary for "Virtual-IT" to effect return of the products.

Virtual-IT shall retain all worldwide rights in the Intellectual Property and Copyright in and on all Products, Development, Services as well as our Web and e-Learning Sites, including, but not limited to, trademarks, service marks, trade dress, inventions, ideas, trade secrets, the source code, the HTML code, the "look and feel" of the Site, its colour combinations, layout, and all other graphical elements, and the copyrights. The Purchaser/Renter shall retain Copyrights to their own content they have supplied for Virtual-IT to upload to the eLearning sites. You should assume that everything you read or see on the Site is copyrighted, trademarked, or otherwise protected and owned or licensed by Virtual-IT.

Except as expressly stated on the Site or in these Terms, nothing that you read or see on the Site or in the courses may be copied, reproduced, modified, distributed, transmitted, republished, displayed, or performed for commercial use without the prior written consent of Virtual-IT except as provided in these Terms. Nothing in these Terms grants you an express or implied license to use any of Virtual-IT's intellectual property.

## **Transfer of Rights**

The Purchaser/Renter agrees that "Virtual-IT" may cede its rights in terms of this contract and transfer its ownership in the products without its consent.

The Purchaser/Renter shall not be entitled to cede and assign his rights under this contract without the prior written consent of "Virtual-IT".

## **Breach**

Should the Purchaser/Renter breach any of these Conditions, "Virtual-IT" shall in its election and without prejudice to any rights which "Virtual-IT" may in law have the right to:

cancel the contract without prior notice to the Purchaser/Renter;

remove and repossess all the products and recover the damages which "Virtual-IT" may have suffered consequent upon such cancellation;

abide by the contract and claim from the Purchaser/Renter payment of the purchase price outstanding or any outstanding recurring fees which amounts shall immediately become due and payable.

## **Limitation of Liability**

Neither "Virtual-IT" nor any of its officers, directors, members, employees, or agents/consultants shall be liable for any loss or damage, whether direct or indirect, consequential, or otherwise, whatsoever, suffered by the Purchaser/Renter arising from any cause in connection with the supply of the products or services (including without limitations any act, omission, or negligence on the part of "Virtual-IT" or its employees or agents).

## **The Use of the Product Is at Your Risk**

You use "Virtual-IT" Products and Services at your risk. You must evaluate, and bear all risks associated with the use of any Content, including reliance on the accuracy, completeness, or usefulness of any Content. Any content you download/transfer/add is downloaded/transferred/added at your own discretion and risk, and you are solely responsible for any damage to your computer system or any systems whatsoever and for the loss of any data that results from the downloading/transferring/adding of any such content, including any damages resulting from computer viruses. It is your responsibility to ensure you have an anti-virus software loaded that covers all your computer systems and is kept up-to-date.

We endeavor to provide a convenient, functional, and safe product, but we do not guarantee that the Content will be error free or that the Product or the server that may operate it is free of viruses or other harmful components.

Any use whatsoever of any of our Products are subject to these Terms and Conditions, even if the sign-on Terms and Conditions are not present as you open the Product.

Although we will use reasonable endeavors to maintain the Content, we urge Purchaser/Renters to keep regular backup copies of all their data used with the Product. Virtual-IT will accept no responsibility whatsoever for the lack of any backups or the loss of any data or any compliance issues with data.

If your use of the Product results in the need for servicing or replacing property, material, equipment, or data, we will not be responsible for such costs.

Without limiting the above provisions, everything within the Product is provided to you "as is" and "as available" without warranty or condition of any kind, either expressed or implied, including, but not limited to, any implied warranties of merchantability, fitness for a purpose, or non-infringement. We exclude all representations and warranties to the fullest extent permissible under any Applicable Law. Virtual-IT is not liable for criminal, tortious or negligent actions or omissions of third parties.

If a jurisdiction does not allow the exclusion of implied warranties in accordance with the paragraph above but allows limitations of a certain maximum extent, then we limit our warranties to that extent.

It is the responsibility of the Purchaser/Renter to ensure that their network system and/or hardware and/or software have the capabilities to run any "Virtual-IT" Product they have purchased or rent. If there is a problem running any "Virtual-IT" Product, "Virtual-IT" has the right to bring in experts, at the Purchaser/Renter's expense, to establish the cause of such problem. All software on the Purchaser/Renter's computers must be a legalised and registered copy. The same version of MS Access should be on all computers accessing the "Virtual-IT" software and the version of Windows should be consistent. It is the Purchaser/Renter's responsibility to ensure they have the correct software loaded on the computer/s that will host the "Virtual-IT" database/s.

If the Purchaser/Renter allows anyone other than a "Virtual-IT" employee to work on a Virtual-IT Product without the express authorization from Virtual-IT then the support clause will fall away and Virtual-IT will accept no responsibility whatsoever for that Product.

"Virtual-IT" accepts no responsibility, whatsoever, for any impact that changes in legislation might have on our databases or to changes there might be to reporting structures in terms of that legislation.

Virtual-IT, its employees, agents and/or consultants will not be liable for any direct, indirect, consequential, special, or other damages resulting from your use of any of our Product or Services.

You will expressly indemnify Virtual-IT the officers, directors, members, employees, or agents/consultants of "Virtual-IT" from any actions, damages, liabilities, and costs, including all legal costs, arising from any breach of these Terms and Conditions.

"Virtual-IT" uses remote accessing facilities to install or service Purchaser/Renters "Virtual-IT" databases, as well as using Training Videos hosted on the Internet and eLearning products. Virtual-IT, its employees, agents and/or consultants will not be liable for any loss, direct, indirect, consequential, special, or other damages resulting from this method of access.

"Virtual-IT" strives to provide eLearning clients access to their online courses on a continuous basis. To that end, "Virtual-IT" will take all commercially reasonable efforts to provide uninterrupted access to the courses to its Clients Learners. However, from time to time, students may be unable to access the courses due to conditions beyond Virtual-IT's control. Such conditions include, but are not limited to: force majeure, acts of God, power outages and others acting outside of the law. Also, from time to time, access may be unavailable due to regular maintenance of the system and other related reasons. In response to any unavailability of the Courses to Students, Virtual-IT will take all commercially reasonable steps to ensure access is restored within a reasonable time. The term "commercially reasonable" as used in these terms, shall mean Virtual-IT, its employees, agents and/or consultants will not be liable for any direct, indirect, consequential, special, or other damages resulting from any interruption of access to any of its services.

### **Prices and Terms**

Unless otherwise stated all orders will be invoiced at the prices in effect on the date of shipment, which the Purchaser/Renter agrees to pay. Payment must be made in full before any installation or development begins. No refunds will be entered if the Product has been sold as part of a "Special Offer" or has been discounted.

### **Alteration or Waiver of Conditions**

No agent, consultant or employee of "Virtual-IT", other than that of a Member thereof, has "Virtual-IT" 's authority to alter or vary these conditions.

No agreement varying, adding to, deleting from, or canceling any of these conditions and no waiver of any rights under these conditions shall be effective unless reduced to writing and signed by a Member of "Virtual-IT". No representations other than those included in this contract shall be of any force or effect unless reduced to writing and signed by both parties.

Once products or services have been ordered by the Purchaser/Renter such order cannot be varied or cancelled in any manner whatsoever, other than in writing and signed by the Purchaser/Renter and "Virtual-IT".

### **Miscellaneous**

The proposed delivery date of products shall not constitute a material term of this contract and any failure by "Virtual-IT" to adhere to such date shall not entitle the Purchaser/Renter to cancel this contract nor relieve him from his obligation hereunder.

The Purchaser/Renter assumes the responsibility for the selection of the Product as being adequate for and appropriate for the Purchaser/Renters purposes.

If the Purchaser/Renter or anyone associated with their Company edits or adjusts any report, certificate, form, table etc. within the LMS they do so at their own risk. If Virtual-IT need to edit or repair anything a Purchase/ Renter has adjusted, the repair work is chargeable.

The Purchaser/Renter accepts that the importing of logo's, data, the addition of Purchaser/Renter contact details and the preparation of the Products for delivery are personalisation of the database for the Purchaser/Renters and are undertaken conditional to the sale. If a refund is requested the costs for this personalization will be recovered, prior to the refund calculation, based on an initial charge of 3 hours at "Virtual-IT" s current hourly rate for a Single User License and 30 minutes thereafter per additional license plus any charge for any importing of data and/or development.

The Purchaser/Renter accepts our cancellation policy namely, for cancellations after seven days or less from invoice a cancellation fee of 10% will be deducted from the refund. For cancellations after eight days to thirty days from invoice a cancellation fee of 30% will be deducted from the refund. For cancellations after thirty days to 6 months from invoice a cancellation fee of 50% will be deducted from the refund. After 6 months, no refund is payable. There are no refunds on discounted/special offer sales. These cancellations apply to once off purchases only. There will be no refunds for eLearning courses developed for Clients once the final proof has been accepted. All cancellations must be in writing. If the Product is a e-Learning Course developed by the Purchaser/Renter, on confirmation that all fees, any penalties etc. are fully paid the Purchaser/Renter will receive a copy of their course structure. Cancellation will only take place once all invoices on recurring monthly payments are made in full.

Any Hosting contracts must be cancelled by 30 days' notice in writing, unless they form part of an eLearning package where there is a six-month minimum contractual period.

One of Virtual-IT's services we offer is that we host the LMS for you on our Cloud server. We use a third-party service provider with an excellent background. Backups are done daily. All our eLearning Platforms are run on a public domain, you may add an SSL Certificate to further enhance the level on security on the site itself. Regarding support, Virtual-IT would act as third line support during our support periods. Learners would contact the Purchaser/Renters support team for first line support and if necessary those support administrators would contact Virtual-IT. Virtual-IT does not support Learners directly under any circumstances.

All Hosting Fees are due prior to the start of a month. Any fees not paid by the 15th of a month may result in the suspension or termination of the service.

The Purchaser/Renter shall be obliged to notify the "Virtual-IT" in writing within 48 (forty-eight) hours of receipt of the Product of any defects, or any other faults or short/ non-delivery relating to the Product or development to such Products and in the absence of such timeous written notification to "Virtual-IT" it will be deemed to have been acknowledged that the Products were received in good order and condition and to the Purchaser/Renter's satisfaction. In terms of importation/exportation of data, all effort will be made to ensure accuracy, but it is the clients' responsibility to ensure the correctness of such development/data and check data. All development undertaken remains "Virtual-IT" 's intellectual property and copyright. It is Virtual-IT's policy not to work with, adjust, amend, or manipulate Purchaser/Renter's data in any way. "Virtual-IT" 's liability in respect of any article,

service or products delivered which is proved to be defective shall be limited to either replacing such article, or at "Virtual-IT" election, refunding the purchase price or part thereof paid to "Virtual-IT" as long as notice in writing is received within the time specified above. "Virtual-IT" reserves the right to stop work on any project at any time.

The Single and Multi-User LMS Products are sold with 3 (three) months e-mail support included in the price, which runs from the date of invoice. All questions, queries etc., of any nature, to be e-mailed to [support@virtual-it.co.za](mailto:support@virtual-it.co.za) where one of the Virtual-IT team will aim to respond ASAP. The e-mail support department is operational Monday to Thursday 09.00 to 15.00 and Friday 09.00 to 14.00 CAT. "Virtual-IT" has an annual close-down in December/January each year when the support department is closed. Telephonic support will not be entered into. We do not undertake call outs or on-site training but if they were to happen then these would be charged out at the applicable hourly rate plus travelling and accommodation (where necessary). The Lite LMS Products are sold with access to the knowledge base FAQ supplied during installation.

Support for our eLearning products is limited to support calls from the Clients administrators. Virtual-IT will not support Students directly under any circumstances. Support from Students must be forwarded to your support section, if your support team cannot answer the query then these queries can be forwarded to the Virtual-IT support team who will deal them during our support working hours, as listed above.

In the event of any amount payable by the Purchaser/Renter not being paid in full on or before the due date then the total amount owing in terms of this contract shall immediately become due and payable. "Virtual-IT" shall be entitled to charge interest in respect of any overdue amounts at the maximum rate permissible from time to time as set forth in the Limitations and Disclosure of Finance Charges Act No. 73 of 1986, as amended, or any other applicable legislation.

Payment of the purchase price, or Hosting or any part thereof by the Purchaser/Renter to "Virtual-IT" may not be withheld pending the settlement of any claims or disputes.

No extension of time or other relaxation or indulgence which "Virtual-IT" may grant to the Purchaser/Renter shall in any way prejudice any of "Virtual-IT" 's rights hereunder and more particularly, and without derogating from the generality of the a foregoing, no act of "Virtual-IT" in accepting an installment after due date or in accepting a lesser sum than the amount due, shall operate as or be deemed to be a waiver by "Virtual-IT" of any of its rights hereunder or a novation of any of the terms or conditions of this sale.

The purchase price is payable to "Virtual-IT" in South African currency to "Virtual-IT" 's Bank Account by Electronic Funds Transfer (EFT). "Virtual-IT" reserves the right to review the pricing and take appropriate action when changes to any Product, Development or Hosting specifications are requested by the Purchaser/Renter after an order has been made.

Any bank charges or variation in the rate of exchange shall be borne by the Purchaser/Renter. Unless otherwise stated in writing by "Virtual-IT", all Sales payments shall be made prior to delivery of the services/products supplied.

In the event of "Virtual-IT" deciding to institute legal action for the enforcement of any of its rights against the Purchaser/Renter, it shall be entitled to do so in the Magistrate's Court which would, but for the claim size, have jurisdiction.

The Purchaser/Renter shall pay all legal costs incurred by "Virtual-IT" on an attorney own client scale in taking any legal action against the Purchaser/Renter for the enforcement of any of its rights.

The Purchaser/Renter hereby chooses domicilium citandi et executandi for all purposes incidental to or arising out of this contract, including the service of summons, at the address of the Purchaser/Renter given on the order form.

All quotations are valid for 30 days only (unless they form part of a special offer) and are based on one installation date, in one location, via the internet. Any calls for further training, installation and development are chargeable and will be conducted via the Internet. "Virtual-IT" does not undertake live training nor onsite call outs but if there is a call to the client's premises, an hourly rate, travelling and where applicable and accommodation are to the Purchaser/Renters account.

## **Site Content**

You acknowledge that Content of the Product is subject to copyright and possibly other intellectual property rights. Such Rights remain with Virtual-IT. Access to the intellectual property (development) is not permitted.

Unless you are expressly authorized by law you must not yourself, or participate in or permit any other person, to:

- (i) sell, reproduce, distribute, modify, display, publicly perform, prepare derivative works based on, repost, or otherwise use any of the Content in any way for any public or commercial purpose without our prior written consent; or
- (ii) use any Content on any other web site or in a networked computer environment for any purpose; or
- (iii) reverse engineer any Content consisting of downloadable software; or
- (iv) otherwise infringe the Intellectual Property Rights of any person in using the Site or any Content.
- (v) Install more LMS's than the number of licenses you have paid for.

Nothing you do on or in relation to the Product will transfer any Intellectual Property Rights to you or license you to exercise any Intellectual Property Rights unless this is expressly stated.

### **Notices**

We will give you any necessary notices by posting them on to our Web Site [www.virtual-it.co.za](http://www.virtual-it.co.za). You agree:

(i) to check the Site for notices;

(ii) that you will be considered to have received a notice when it is made available to you by posting on the Site.

### **General Provisions**

If any part of this agreement is held to be unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remainder will remain in full force and effect.

This agreement will be governed by the laws of the Republic of South Africa. You irrevocably submit to the exclusive jurisdiction of the courts of the Republic of South Africa.

You agree to defend, indemnify, and hold harmless us, our officers, directors, members, employees, or agents/consultants, from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, alleging or resulting from your use of the Product/Services or the Content or your breach of this agreement.

The "Virtual-IT" website contains links to other Internet sites. No inference can be made or representation implied that "Virtual-IT" is connected with, operates, or controls these linked web sites. "Virtual-IT" is not responsible for the content on the aforesaid sites. The linked sites are for the user's convenience only and the user access thereto is at the users own risk. When visiting linked sites, the user must refer to that linked site's individual terms of use.

By visiting [www.virtual-it.co.za](http://www.virtual-it.co.za), you agree that the laws of the Republic of South Africa, without regard to principles of conflict of laws, will govern these terms and conditions and any dispute of any sort that might arise between you and Virtual-IT.