

**BUSINESS TERMS AND CONDITIONS****1. ACCEPTANCE**

- 1.1 These Terms and Conditions (**Terms**) are between Sunspace Projects Pty Ltd as trustee for Sunspace Projects Trust trading as Max and Min Maths Club ABN 55 975 148 229, its successors and assignees (referred to as “**we**”, “**us**” or “**our**”) and you, the person, organisation or entity that purchases Products from us (referred to as “**you**” or “**your**”), and collectively the Parties. These Terms apply to all sales made by us to you.
- 1.2 You have requested specific products, described on and able to be ordered via our website [www.maxandminmaths.club](http://www.maxandminmaths.club) (**Site**) (**Products**). You accept these Terms by:
- ticking the online acceptance box;
  - confirming by email that you accept the Terms; or
  - making part or full payment for the Products.
- 1.3 **You agree that these Terms form the agreement under which we will supply Products to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details at the end of these Terms. Using or purchasing our Products indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order or use the Products if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you should not use or purchase our Products from us.
- 1.4 We will not provide you with the Products until you have paid the first instalment of our Subscription Fees.

**2. SUBSCRIPTION AND SERVICES**

- 2.1 Access to our Products will require you to register for an account (**Account**), and provide information, including your full name and email address, and pay subscription fees, as set out on the Site (**Subscription Fees**). It is your responsibility to keep the details of your Account, including user name and password, confidential. You are liable for all activity on your Account, including any purchases made using your account details.
- 2.2 We may provide the Products to you using our employees, contractors and third party providers and they are included in these Terms.
- 2.3 Third parties who are not our employees or our direct contractors (**Third Parties**) will be your

responsibility. We are not responsible for the products or services provided by Third Parties.

**3. PRICE, INVOICING AND PAYMENT**

- 3.1 When subscribing to our Site, you agree to pay the applicable Subscription Fees as set out on the Site. The Subscription Fee for the first month or year (as applicable) shall be paid at the time you subscribe for the Products. Future Subscription Fees shall automatically be charged to your credit card (provided by you upon subscription via a secure third party payment gateway) on a monthly or annual basis depending on the type of subscription you purchase. All amounts are stated in Australian dollars. All purchase prices include Australian GST (where applicable).
- 3.2 The Subscription Fees can be varied by written agreement between us, including by email, and may be requested via your Account. The Products may be varied by us at any time, including to fix bugs and to provide upgrades.
- 3.3 If we do not receive a Subscription Fee in full on its due date for any reason, we will stop providing you with the Products.
- 3.4 Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion. The pricing changes will apply to you for Products provided to you after the date of the change. All other changes will apply from the date that the amended or new Terms are posted on our Site or are provided to you, whichever is earlier.
- 3.5 If you request a change to your subscription (**Variation**), we have discretion as to whether we provide this Variation for you and whether an adjustment to the Fee may be required in respect of the same. If we agree to provide a Variation, then we will inform you of any additional cost. Any additional cost must be paid before we provide the Variation, and we will invoice you accordingly.

**4. YOUR OBLIGATIONS AND WARRANTIES**

- 4.1 You warrant that you will not canvass, employ, induce or attempt to employ, induce, solicit or entice away from us, any employee or contractor that was employed by or contracted to us during the term that we provide Products to you or the prior 12 month period.
- 4.2 You warrant that throughout the term of these Terms that:
- there are no legal restrictions preventing you from agreeing to these Terms;
  - you will use the Products in the matter intended, describe the Products as set out on the Site, and not make misleading or deceptive statements or false representations about the Products by act or omission;

- (c) you will cooperate with us and provide us with information that is reasonably necessary to enable us to provide the Products as requested by us from time to time, and comply with these requests in a timely manner;
- (d) the information you provide to us is true, correct and complete;
- (e) you will not infringe any third party rights in working with us and receiving the Products;
- (f) you will inform us if you have reasonable concerns relating to our provision of Products under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
- (g) if applicable, you hold a valid ABN which has been advised to us; and
- (h) if applicable, you are registered for GST purposes.

## 5. OUR INTELLECTUAL PROPERTY

- 5.1 The work and materials that we provide to you in providing the Products contains material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 5.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.
- 5.3 Your use of our Materials does not grant you a licence, or act as a right to use, any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 5.4 You must not breach our Intellectual Property rights by, including but not limited to:
  - (a) altering or modifying any of the Materials;
  - (b) creating derivative works from the Materials; or
  - (c) using our Materials for commercial purposes such as onsale to third parties.
- 5.5 Upon full payment of the Subscription Fees, you will be provided with access to the Licensed Material.
- 5.6 We grant you a non-perpetual, non-exclusive, revocable, Australia wide and non-transferable licence to use the Licensed Material for the agreed purposes set out on the Site. If you are a teacher or tutor (or any party who receives payment for services using the Products), with an Account your commercial use of the Licensed Material is strictly limited to use with your private students, and can only be accessed

on one electronic device per licence logged on at any one time.

## 6. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS

- 6.1 If you provide information including any Intellectual Property to us, then you:
  - (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
  - (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Products to you; and
  - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 6.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
  - (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us;
  - (b) irrevocably consent to us using or applying the Intellectual Property without any attribution of authorship;
  - (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
  - (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement.

## 7. CONFIDENTIAL INFORMATION

- 7.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than, where necessary, Third Party Suppliers) other than as set out in our Privacy Policy, which is available on the Site; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you, to provide better quality services to you, and not for any other purpose.
- 7.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, and not for any other purpose.
- 7.3 These obligations do not apply to Confidential Information that:
  - (a) is authorised to be disclosed;

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- (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
- (c) is received from a third party, except where there has been a breach of confidence; or
- (d) must be disclosed by law or by a regulatory authority including under subpoena.
- 7.4 This clause will survive termination of these Terms.
- 8. FEEDBACK AND DISPUTE RESOLUTION**
- 8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Products, please contact us.
- 8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
- (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 9. TERMINATION**
- 9.1 The Parties may terminate these Terms by mutual agreement, upon 7 days' notice per the Notice Period in writing including by email.
- 9.2 Either Party may terminate these Terms, if there has been a material breach of these Terms, subject to following the dispute resolution procedure.
- 9.3 We may terminate these Terms immediately, at our sole discretion, if any of the following events occur, and in the case of remediable events, where the event has not been remedied within 7 days after receiving notice of the event occurring:
- (a) we consider that a request for the Service is inappropriate, improper or unlawful;
- (b) you fail to provide us with clear or timely instructions to enable us to provide the Products;
- (c) we consider that our working relationship has broken down including a loss of confidence and trust;
- (d) you act in a way which we reasonably believe will bring us or our Site into disrepute;
- (e) you provide us with incorrect payment details or any other incorrect information;
- (f) you fail to pay an Invoice by the payment date; or
- (g) for any other reason outside our control which has the effect of compromising our ability to provide the Products.
- 9.4 On termination of these Terms you agree that any Deposit or payments made are not refundable to you, and you are to pay all Invoices for Products rendered to you.
- 9.5 If you terminate these Terms early, you must pay for all Products provided prior to termination, including any Products which have been provided and have not yet been invoiced to you.
- 9.6 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 9.7 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.
- 9.8 On completion of the Products, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 9.9 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 10. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 10.1 **Australian Consumer Law (ACL):** Certain legislation including the Australian Consumer Law (ACL) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Products by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
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- 10.2 **Products:** If you are a consumer as defined in the ACL, the following applies to you: *“Our goods come with warranties and guarantees that cannot be excluded under the Australian Consumer Law (Consumer Guarantees). You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure”.*
- 10.3 Nothing in these Terms remove your Statutory Rights as a consumer under the ACL. You agree that our liability for Products provided to consumers is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.
- 10.4 Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied, and we expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 10.5 **Delay:** Where the provision of Products depends on your information or response, we have no liability for a failure to provide the Products in the period set out on the Site where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 10.6 **Warranties:** To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 10.7 **Liability:** To the extent permitted by law, we exclude all express or implied representations, conditions, guarantees and terms relating to the Products and these Terms, except those set out in these Terms, including but not limited to:
- implied or express guarantees, representations or conditions of any kind, which are not stated in these Terms;
  - the Products being unavailable; and
  - any loss, damage, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, or otherwise, suffered by you or claims made against you, arising out of or in connection with your inability to access or use the Products, the use of our Products and the late supply of Products, even if we were expressly advised of the likelihood of such loss or damage.
- 10.8 **Disclaimers:**
- We endeavour to ensure the Products available on the Site is fit for the purpose described, however subject to any consumer guarantees under the ACL, which cannot be excluded, we provide no warranty whether express or implied as to the suitability and efficacy of the Material and Licensed Material, and we provide no guarantee that the Material or Licensed Material will produce satisfactory educational outcomes. We accept no liability for any errors, omissions or misinterpretation from your use of the Material and Licensed Material.
  - We have no control over and do not provide any warranties or guarantees that the persons using the Products will be qualified to use the Products, or have completed a Working with Children check. If you have concerns about any person using the Products, it is your responsibility to make such enquiries.
- 10.9 **Cancellations and Refunds:**
- You may cancel your subscription to the Products at any time. If you do so, you will only receive a refund of Subscription Fees in accordance with clause 10.9(b) and we will not charge any further Subscription Fees to your credit card.
  - We offer a full refund of the Subscription Fees for change of mind if you notify us in writing that you wish to cancel your subscription within the first 30 days of your subscription.
- 10.10 **Limitation:** Our total liability arising out of or in connection with the Products, however arising, including under contract, tort, including negligence, in equity, under statute or otherwise, will not exceed the total fees paid by you to us in the twelve (12) month period prior to the event giving rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made, as applicable.
- 10.11 This clause will survive termination of these Terms.
- 11. INDEMNITY**
- 11.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and

reasonable legal costs, resulting directly or indirectly from:

- (a) any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) any breach by you of these Terms;
- (c) any misuse of the Products, the Site or the Materials or Licensed Materials from or by you, your employees, contractors or agents; and
- (d) your breach of any law or third party rights.

11.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Products including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

11.3 This clause will survive termination of these Terms.

## 12. GENERAL

12.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

12.2 **Publicity:** You consent to us using advertising or publically announcing that we have undertaken work for you.

12.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

12.4 **GST:** If and when applicable, GST payable on the Products will be set out on our Invoices. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.

12.5 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.

12.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).

12.7 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be

interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.

12.8 **Force Majeure:** We will not be liable for any delay or failure to provide Products under these Terms if such delay is due to any circumstance beyond our reasonable control. If we are delayed due to such a circumstance for a period of at least 2 months, we may terminate our agreement with you by giving you 5 business days' notice in writing.

12.9 **Notice:** Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to you at the email address in your Account. Our address is set out at the end of these Terms. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.

12.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of New South Wales and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.

12.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

## 13. DEFINITIONS

13.1 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.

13.2 **Confidential Information** includes confidential information about you, your credit card or payment details, the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas,

- concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 13.3 **GST** means GST as defined in the *A New Tax System (Goods and Products Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 13.4 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs (whether or not registered or registrable), any corresponding property rights under the laws of any jurisdiction, discovery, circuit layouts, trade names, trade secrets, secret process, know-how, concept, idea, information, process, data or formula, business names, company names or internet domain names.

- 13.5 **Licensed Materials** means the animated videos, quizzes, charts, and other educational materials we provide on the Site from time to time, as made available to you based on your subscription.
- 13.6 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).

**Contact details:**

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ABN 55 975 148 229

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**Email:** [hello@maxandminmaths.club](mailto:hello@maxandminmaths.club)

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