



Terms of Use

Kitney web-sites & products

Thank you for visiting our website, we are very proud of what we do and continually strive to improve our business and business practices. These terms and conditions, together with our privacy policy, any disclaimers or other site policies or notices ('terms'), set out the conditions upon which we make our website and products available for use or sale. These terms are important, and we expect all users to comply with them. It takes an enormous amount of time and resources to produce a quality online platform and products and these terms are one of the ways we protect our investment.

We also take privacy seriously and have developed our Privacy Policy to let you know what personal information we collect, how we use it and how we look after it.

By using the website, opening an account with us or purchasing or using a product, you are agreeing to be automatically bound by these terms. We encourage you to carefully read and understand these terms before using the website or purchasing any of our products. If you don't agree, your remedy is to stop using our website and/or to not purchase or use our products.

We may update our terms from time to time and the new provisions will apply from the date they are updated.

1 Defined words

1.1 In this agreement:

When we use the word **website**, we mean our main website at www.kitney.com, together with sub-sites (for example www.toolkit.kitney.com & www.toolkit-training.kitney.com), linked website accounts under our control (for example Vimeo & Thinkific) and related blogs, social media platforms, message boards or similar.

When we talk about '**us**' '**our**' or '**we**', we mean the Kitney group of companies including Kitney Occupational Health and Safety Pty Ltd ABN 15 150 637 595 and Toolkit Solutions Pty Ltd ABN 19 640 355 460, together with our directors, employees, contractors, authors and representatives.

When we talk about '**you**' or '**yours**', we mean you as a user of our website and/or purchaser or user of our products. If you are the owner of a business, this also includes the entity that owns the business and your employees, contractors, consultants, advisors and others who undertake work for or on behalf of you (if the context permits).

When we talk about **On-line Systems Products**, we mean products we supply that operate within the Microsoft Office 365 environment using apps provided by Microsoft or third parties.

When we talk about **products**, we mean resources available to view or download on our website, On-line Systems Products, documents, collections of documents, on-line training or other content accessible on the web-site, available to purchase using the website or accessible by another method, whether these items are paid for or available free. **Products** does not cover our consultancy services, and face to face workshops or training (even if these are advertised or able to be booked and paid for via our website), we have separate agreements for these items. Our privacy policy covers all of our services including products, consultancy, workshops and training.



2 No unlawful or prohibited use

As a condition of your use of the website or our products, you warrant that you will not use the website or our products for any purpose that is unlawful or prohibited by these terms and conditions. You must not use the website in any manner which could damage, disable, overburden, or impair the website or interfere with any other party's use and enjoyment of the website. You agree not to hack into areas of the website that are not intentionally made available to you.

You expressly agree not to:

- use the website as a lead generation tool for the benefit of your own business, or to manufacture “lists” in order to help your own business, without our prior approval;
- engage in any internal or external spamming, or other similar actions;
- engage in any unlawful or immoral acts, or acts which are in violation of these terms and conditions;
- use the website in a manner that is damaging or potentially damaging to our reputation; or
- decompile, reverse engineer, or try to copy or imitate the website or underlying content.

3 Payments and refunds

We use third-party providers eWay, PayPal and Stripe for payment processing. Each of the third-party providers have their own terms and conditions for use of their services and, if it is important to you, you should read their relevant policies for terms of use and information on security and privacy. You may also select bank transfer at checkout if you would prefer to transfer the payment funds directly however please note your content will not be available until the transferred funds show as cleared in our account.

As the complete content is available for electronic downloads or viewable products, no refunds are available on these products (unless there is a fault in the download, you have contacted us for support as soon as possible and we have not been able to rectify the problem).

In respect of the **On-line Systems Products** if we fail to supply this product for technical or any other reason we will refund the sum you paid and you acknowledge this will be your only remedy for us failing to supply the product.

If you have a question about suitability of a product for your purpose, please contact us before you make a purchase.

If you have purchased a product and feel a more comprehensive package may have been a better fit for your organisation, please contact us as soon as possible and we may be able to supply an upgrade for the difference in price.

4 Digital delivery

For downloadable or viewable digital products, we will make an electronic download link available in your account once we have received your payment as cleared funds. This usually happens within a few minutes for eWAY gateway payments however may take a few days for a bank transfer.

For downloadable products, unless otherwise stated in the product description, you will be able to download the product a maximum of 3 times within a 30-day period (from the date we make the link available). The download link will be deactivated after 30 days so please make sure you download the product within this period.



For On-line Systems Products we will make contact with you within three business days by e-mail to agree the process and timescale for provisioning of the product into your Microsoft 365 tenancy.

For viewable only products, for example a video or electronic book, the link placed into your account will enable you viewing access only for the period of time stated in the product description.

If you have difficulty with a download or accessing the product or documents, please contact us for support at toolkitsupport@kitney.com. To enable us to promptly address your concern, be sure to include your invoice number, date and name of product, name of the purchaser (if this is different to the person sending the support request) and the problem you are experiencing.

5 Copyright, trademarks and other intellectual property

5.1 General

We have the exclusive right (either by ownership or license) to use all intellectual property displayed on, accessible on, or sold from the website, including, but not limited to documents, collections of documents, On-line Systems Products, information sheets, articles, videos, and questionnaire/survey tools, whether the content is paid for or provided free of charge (called IP Works).

Information, images and item descriptions posted on the website by third parties are the responsibility of those third parties and may be subject to copyright. You must seek permission from the third party before using any of their content.

The names of actual companies and products mentioned on the website may be the trademarks of their respective owners. You must contact that owner for permission prior to use.

Any example companies, organizations, products, people and events depicted on the website are fictitious. No association with any real company, organization, product, person, or event is intended or should be inferred.

5.2 End user license

We use this licence to protect the IP Works. They are a valuable asset of our business. No ownership in the IP Works passes to you in any circumstances.

When you use IP Works, you agree to be bound by the terms of this licence. You may only view, download and/or use the IP Works in accordance with the terms of this licence.

5.3 Grant of license

Provided you have lawfully accessed the IP Works, paid for the IP Works (if applicable) and are not in default under these terms and conditions, we grant you a non-exclusive, royalty-free, non-transferable sublicense to use the IP Works for the permitted use and in accordance with these license terms.

5.4 Permitted use – What you can do with the IP Works

Permitted use: You may use the IP Works, make amendments to the IP Works and use the amended IP Works as follows:



- You can store a copy of the IP Works (and backups of the IP Works) on any one or more of your own devices or devices within your business.
- On-line Systems Products may be provisioned into a single Microsoft 365 tenancy that is licenced to and operated by you.
- If you sell, give away or dispose of a device that has a stored copy of the IP Works, you must delete the IP Works from the device before the device leaves your control.
- You can print copies of the IP Works for your own purpose, but not for distribution to others for commercial purposes. For example, you could print and distribute a copy for your employees use at your workplace, but you could not print and use the IP Works in a commercial seminar.
- You may create a digital library, network configuration or similar arrangement to allow the IP Works to be viewed by your employees or contractors.
- If you have downloaded or copied the IP Works for a business purpose, and you sell the business, the IP Works may be transferred with the business without the need to obtain a further licence provided you make the buyer aware that the IP Works are used under a license with which they must comply with. You may not hold out you are the owner of the IP Works. There is a link on the website and in the footer of On-line Systems Products to these terms.

If, under one of the above permitted uses, you provide a copy of the IP Works to another person (for example, your employee), that person is also required to abide by the restrictions of this license. Third parties, employees and subcontractors have no rights to use the IP Works other than for the purpose of your business and you must make sure they do not access or extract or use the IP Works for any other purpose.

5.5 Restrictions on use – What you cannot do with the works

You must not use, reproduce, distribute, display or create new works based on any of the IP Works except where this is done solely for use within your own business.

You must not use the IP Works (or any part of the IP Works) in the following ways:

- Hold out that you are the owner, author or contributor to the IP Works or that you have the right to grant any third party any rights in relation to the IP Works;
- Sublicense or sell any of your rights under this licence agreement;
- Sell, give-away, share or otherwise distribute the IP Works or any reproduction or derivative of the IP Works to any third party, whether alone, incorporated in something else or bundled together with something else, in any media or format now or hereafter known;
- Sell, license or distribute the IP Works or any modified IP Works as stand-alone files or as part of an online system or database or any other database, or any derivative product containing the IP Works in such way that would allow a third party to download, extract or access the IP Works, a derivative of the IP Works or a part of the IP Works as a stand-alone file;
- Share the IP Works with any other person or entity except as expressly permitted under this licence agreement;
- Post the IP Works online in a format that is able to be copied or downloaded;
- Use, reproduce, distribute or display the IP Works or a derivative of the IP Works in connection with any goods or services intended for resale or distribution, including, without limitation, workbooks, operations manuals and similar products in any media or format now or hereafter known;



- Use, reproduce, distribute or display the IP Works or derivative of the IP Works (including, without limitation, by itself or in combination with any other work of authorship) in any manner that changes the intended meaning of the IP Work or in a manner that is libellous or slanderous or otherwise defamatory, obscene or indecent or unlawful;
- Remove any notice of copyright, trademark, other intellectual property right or printed or embedded link, or other information that may appear on, be embedded in, or connected to the IP Works in its original downloaded form, except where it is indicated on the IP Works that this is allowed;
- Take any action in connection with the IP Works that violates any law, regulation or statute in an applicable jurisdiction; or
- Take any action in connection with the IP Works that violates or infringes our intellectual property rights or other rights of any person or entity.

5.6 Ownership and retention of rights

Except as granted under this licence, or otherwise expressly granted to you in writing, you acknowledge that we (or our licensor) retain all right, title and ownership in the IP Works, no ownership or similar rights in the IP Works passes to you and we do not grant you any other express or implied right or license to use the IP Works or any of our intellectual property.

6 Your content

You warrant that you hold the necessary rights and interests to use any material you add to our website or social media pages or other public access areas (your content) and that your content (or any part of it) does not infringe any third party intellectual property rights, including copyright and trade mark rights.

By submitting your content to our website you irrevocably grant to us a perpetual, world-wide, non-exclusive, royalty-free, sub-licensable and transferable license and right to use your content for the purposes of displaying it (if this was the intention) or providing services to you, now or in the future. We will not use your content for any other purpose. You indemnify us against any claims made for breach of intellectual property rights in respect of your content.

At our sole discretion we may remove or disable your content if we believe your content to be in violation of our terms and conditions or if we receive a take-down notice in relation to your content (or part of it). We are not obligated to return any of your content to you under any circumstances.

7 Content copyright infringement

If you believe that there is material on our website that infringes third party intellectual property rights, please contact terms@kitney.com with sufficient information to enable us to determine who is the owner of the intellectual property and, if we form the reasonable belief that there has been an infringement, then we will remove it from our website.

Be aware that you may be subject to liability if you knowingly make any misrepresentations when providing information to us.

8 Security

While we take steps to implement and maintain security, we do not guarantee the security of the website, our records, our products or your data or content. We disclaim all liability for any computer virus or technological problems that



we do not intentionally cause or that are beyond our control. You are encouraged to install and maintain up-to-date security software on your computer.

Continuous accessibility to the website is dependent upon third party services. As a result, the website may be inaccessible from time to time.

9 Disclaimers

9.1 Links disclaimer

The website may contain links to other websites outside of our organisation (linked sites). As the linked sites are not under our control, we are not responsible for the contents of or any transmission received from a linked site. Links are provided to you only as a convenience, and the inclusion of any link does not imply our endorsement of the website, or any association with its operators. Your use of the linked sites is at your own risk.

9.2 Promoted services disclaimer

If we promote third party products or services via our website it is because they may have provided sponsorship, donations or supported us in some way. You must exercise your own judgment based upon your own personal circumstances before purchasing third party products or services.

9.3 On-line Systems Products disclaimer

While our On-line Systems Products use Microsoft 365 as a platform (MS platform), we are in no way responsible for any functionality of the MS platform, your use of the MS platform, your account with the provider of the MS platform or any harm you suffer due to your relationship with the MS platform provider. You must use your own judgement when deciding to enter into an agreement with the MS platform provider or any third-party providing applications using the MS platform and in determining if the MS platform provider's terms and conditions are suitable for your business and use.

The On-line Systems Products can only be used via a Microsoft 365 platform and you must obtain and maintain (at your ongoing cost) a suitable licence/s with Microsoft to be able to access and use the product. It is not available in any other format. Your Microsoft 365 licence/s and your use of it/them is your responsibility not ours. If you have any questions regarding the type of licence you need to use our On-line Systems Products, please contact us.

IMPORTANT: There are specific settings within Microsoft 365 for data retention. Data retention policies need to be set by you otherwise the default settings might cause data you have entered to be periodically deleted. This could be critical if the data contains important health and safety records. We accept no responsibility for your loss of any data and recommend that you seek professional advice regarding setting data retention policies.

We accept no responsibility, and offer no refunds, for your inability to use the product due to:

- you not having a suitable Microsoft 365 licence;
- you not being able to obtain a suitable Microsoft 365 licence;
- your Microsoft 365 licence/s being terminated or suspended for any reason;
- your hardware and systems infrastructure being inappropriate and/or your internet connection being too slow or unreliable; or
- changes being made to the Microsoft 365 platform, or for any other reason.



9.4 Content use disclaimer

You acknowledge and agree that your use of the website and product is entirely at your own risk. We make no warranty about the suitability, accuracy or correctness of any information or whether the application by you of any information provided by us will result in you achieving your objectives or compliance with any law. You take full responsibility for all use you make of the information provided and remain solely responsible for your own understanding, application and compliance with all laws.

We operate our business in Australia. The website and products are designed for users in Australia who are operating and working under the harmonised Work Health and Safety legislation. The content may still be of interest to users outside of Australia however caution should be taken applying information to a different legal jurisdiction. While we source our information from reliable sources, we make no warranty that any information on the website or in any product is correct, suitable for any purpose, reliable, relevant, complete or accurate.

To the maximum extent permitted by applicable law, anything contained on the website or in any product is provided "as is" without warranty or condition of any kind. You agree to take full responsibility for all use you make of the website and products and any application you make.

You acknowledge and agree that any information, including general advice, displayed on our website or contained in products is general in nature, not specific to you and does not take into account your personal circumstances, risks or objectives. Even if you purchase a module that relates to a specific industry, eg aged care, the advice is still only general to that industry, not specific for your particular circumstance. Accordingly, nothing on our website or in a product amounts to medical, legal, financial or other professional or regulated services advice. The material on the website and in any product is provided for information only and does not replace the need for specific advice relevant to your particular circumstances. Should you require professional advice please contact us regarding the provision of consultancy services via email at contact@kitney.com.

9.5 General disclaimer

We accept no responsibility for any interference, loss, damage or disruption to your own computer system caused or contributed to by your use of the website our products or any linked site. You must take your own precautions to protect yourself from any risk of viruses, malicious computer code or other forms of interference which may damage your own computer system.

These disclaimers apply to the fullest extent permitted by law and survive any termination or expiration of these terms and conditions or your use of the website or the information purchased, downloaded or viewed on the website.

We reserve the right to change, edit, update (or not update), fix typographical errors, remove or replace sections or otherwise alter content in any product or on the website at any time.

10 Limitation of liability

We will not be liable to you or any other person or entity for any damages whatsoever arising as a result of your use of the website or product in any way, subject to the requirements of Australian Consumer Law.



Where warranties are implied by law, you acknowledge and agree that the total aggregate liability to us is limited at our discretion to the provision of those services again, or to a refund equal to the total amount paid by you for the particular services that are the subject of the cause of action, even if those services were provided to you without cost.

This limitation of liability applies to the fullest extent permitted by law and survives any termination or expiration of this agreement or your use of the website or the product.

11 Indemnity

You agree to indemnify and defend us from any claims, damages, liabilities, costs, or expenses (including without limitation court costs, collection costs, and reasonable legal fees) related to:

- any content you post via the website;
- your unauthorised use of the website, the IP Works, or products or services included or advertised on the website; or
- your breach of these terms and conditions.

12 Applicable law

This agreement is governed by the laws of Queensland, Australia and you consent to the exclusive jurisdiction and venue of courts in that State or the Federal Courts within Australia, in all disputes arising out of or relating to the use of the website and/or the products.

You may provide notice to us by email addressed to 'the Directors' and sent to terms@kitney.com. We may provide notice to you via email or other electronic means.

Use of the website or our products is unauthorized in any jurisdiction that does not give effect to all provisions of these terms of use, including without limitation this paragraph. If you are resident in a jurisdiction where the use of the website is unauthorized, it is your responsibility to stop using the website and/or not purchase our products.

13 Relationship

You agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of this agreement, use of the website or purchase of our products.

Our performance of this agreement is subject to existing laws and legal process. Nothing contained in this agreement can be used to inhibit our right to comply with governmental, court and law enforcement requests or requirements relating to your use of the website, or with regard to information provided to or gathered by us with respect to your use.

14 Validity

If any part of these terms and conditions is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the terms and conditions will continue in effect.



15 Feedback, comments or complaints

If you have any questions, please contact contact@kitney.com and we will usually respond to all enquiries within two business days.

End.