



## Terms and Conditions

### 1. Interpretation

1.1 In these Terms and Conditions ("Conditions"): "A&DC" means The A&DC Group Ltd, whose registered address is at 120 Church Street, Brighton, Sussex, BN1 1AU and whose Registered Number is 5566781.

"AC-EXS™ Materials" means all off-the-shelf and customised Assessment & Development Centre Exercises and their component parts created by or for A&DC, including but not limited to information, documents, communications, files, text, graphics, procedures, know how, presentations and manuals whether written or in the form of a video or software program or in any other medium and whether supplied directly to the Client or via a Partner;

"A&DC Intellectual Property" means the Trade Marks and all intellectual property rights in the AC-EXS™ materials including copyright, trade names, get up, format or compilation rights, patents and other intellectual property rights used or embodied in or used in connection with AC-EXS™ Materials;

"Partner" means the company authorized to resell AC-EXS™ materials;

"Client" means the company, business, individual or any other person (legal or natural) purchasing or using AC-EXS™ Materials;

"Registered User" means a person employed by the Client who has been approved and registered by MAC Assessment and Development (Pty) Ltd to use AC-EXS™ Materials;

"Trade Marks" means all derivatives of A&DC®, ADC

AC-EXS™ and The Inbox Collection™ and all other business, trading and domain names used by A&DC in its business.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 These Conditions override any earlier terms and conditions appearing in A&DC catalogues or elsewhere, or referred to by the Client whether in the order or any negotiations.

1.4 A&DC or MAC Assessment and Development (Pty) Ltd may amend, vary or revise these Conditions from time to time. A&DC or MAC Assessment and Development (Pty) Ltd shall notify the Client of such revised Conditions which shall be binding on the parties unless the Client wishes not to accept the new Conditions in which case the Client shall cease using and return all AC-EXS™ Materials not in use by the Client at that time.

1.5 **CONDITION [8] RELATING TO A&DC INTELLECTUAL PROPERTY SHALL BE OF THE ESSENCE OF THIS AGREEMENT. BREACH OF CLAUSE [8] GIVES A&DC THE RIGHT TO TERMINATE THIS AGREEMENT WITH IMMEDIATE EFFECT. IF NECESSARY A&DC AND MAC Assessment and Development (Pty) Ltd WILL TAKE LEGAL ACTION TO PROTECT THEIR RIGHTS.**

2. **Conditions of Supply/Use of Materials**

2.1 These conditions apply to all MAC Assessment and Development (Pty) Ltd sales and supply of AC-EXS™ Materials to the exclusion of all others.

2.2 All orders for AC-EXS™ Materials must be made using the appropriate order

form and must state the name of the Registered User, the Registered User's registration number and signature. 2.3 Registered Users shall inform MAC Assessment and Development (Pty) Ltd of any change of relevant information and must re-register on change of employer.

2.4 Where for whatever reason the Client has no Registered User MAC Assessment and Development (Pty) Ltd reserves the right to repossess all AC-EXS™ Materials and hold them until a qualified replacement has been registered by MAC Assessment and Development (Pty) Ltd.

2.5 AC-EXS™ Materials will only be supplied to Clients with Registered Users and should only be used by such Registered Users or under their supervision.

2.6 AC-EXS™ Materials shall not be copied, amended or resold to any third party. Materials are supplied on the condition that they will be used by the Client in the manner for which they were designed in accordance with MAC Assessment and Development (Pty) Ltd instructions and advice and appropriate professional and ethical standards.

2.7 MAC Assessment and Development (Pty) Ltd reserves the right to withhold AC-EXS™ Materials from those who violate such standards or breach any of these Conditions and/or to cancel the registration of Registered Users who are guilty of non-compliance

2.8 Where the AC-EXS™ Materials ordered include computer software then the Client accepts that it is entitled to use the software only in accordance with A&DC's software licence and a copy of which is provided with such software.



3. **Order Despatch and Return of AC-EXS™ Materials**
- 3.1 MAC Assessment and Development (Pty) Ltd will normally despatch AC-EXS™ Materials within 2 working days of receipt of an order, subject to availability and to clause 4. Orders received after 4pm may not be processed until the next working day.
- 3.2 Telephone orders will be processed only on receipt of written confirmation on the same day by email or facsimile.
- 3.3 Unless expressly stated otherwise in these conditions MAC Assessment and Development (Pty) Ltd will not accept any AC-EXS™ Materials for return or refund and this is a condition of sale. If a Client believes there are extenuating circumstances and wishes to discuss the return of AC-EXS™ Materials a decision will be made on an individual basis.
- 3.4 Where a fault or damage to AC-EXS™ Materials occurs due to MAC Assessment and Development (Pty) Ltd, full credit will be given on return of AC-EXS™ Materials subject to clause 3.5. Where it is not due to a MAC Assessment and Development (Pty) Ltd fault, MAC Assessment and Development (Pty) Ltd reserves the right to charge a handling fee on any AC-EXS™ Materials returned when received without prior authorisation, whatever the reason for return.
- 3.5 If any AC-EXS™ Materials are faulty, MAC Assessment and Development (Pty) Ltd requests to be notified of them within one calendar month of the date they were received by the Client. MAC Assessment and Development (Pty) Ltd will then either replace the Materials free of charge or refund the full price at MAC Assessment and Development (Pty) Ltd's sole option.
4. **Payment Terms and Price**
- 4.1 MAC Assessment and Development (Pty) Ltd accepts payment in Rand by Cheque or Bank Transfer. Payments in other currencies can be made by arrangement. Clients will be expected to pay all charges in relation to bank transfers and currency transactions.
- 4.2 In respect of AC-EXS™ Materials:
- (a) All orders must be paid for in advance or on delivery of materials and receipt of invoice.
  - (b) All invoices are due for payment by the Client within 14 days of the date of the invoice.
  - (c) MAC Assessment and Development (Pty) Ltd reserves the right to ask for prepayment on small orders or where the account is in arrears.
  - (d) MAC Assessment and Development (Pty) Ltd reserves the right to charge interest at 3% over the prevailing base lending rate on overdue balances.
- 4.3 It is a condition of sale that ownership of AC-EXS™ Materials shall not pass to the Client until MAC Assessment and Development (Pty) Ltd has received cleared funds.
5. **Liability**
- 5.1 Subject to condition 5.4 the following provisions set out the entire financial liability of MAC Assessment and Development (Pty) Ltd and A&DC (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- (a) Any breach of these Conditions; and
  - (b) Any representation, statement or tortious act or omission including negligence arising under or in connection with the Conditions.
- 5.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Conditions.
- 5.3 Nothing in these Conditions excludes or limits the liability of MAC Assessment and Development (Pty) Ltd or A&DC for death or personal injury caused by MAC Assessment and Development (Pty) Ltd's or A&DC's negligence or fraudulent misrepresentation relied upon by the Client.
- THE CLIENT'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 5.4**
- 5.4 Subject to conditions 5.2 and 5.3:
- (a) Subject to 5.4 (b) and (c) MAC Assessment and Development (Pty) Ltd and A&DC's total liability in contract, tort, misrepresentation or otherwise, arising in connection with the performance or contemplated performance of these Conditions or the use of AC-EXS™ Materials shall be limited to replacement or reimbursement in respect of AC-EXS™ Materials supplied to the Client; and
  - (b) MAC Assessment and Development (Pty) Ltd and A&DC shall not be liable to the Client for any indirect or consequential loss or damage costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Conditions or for any acts, omissions or negligence of third parties e.g. late delivery by couriers.
  - (c) All reports prepared by MAC Assessment and Development (Pty) Ltd and A&DC represent opinions based on assessment activities and must not be relied upon as statements of fact. For the avoidance of



doubt MAC Assessment and Development (Pty) Ltd and A&DC will not be liable in respect of any recruitment or employment decisions or claims made on the basis of or derived from AC-EXS™ Materials or associated procedures.

## 6. Data Protection and Confidentiality

6.1 The Client shall comply with any prevailing Data Protection legislation that applies in their territory in relation to the use of AC-EXS™ Materials and shall ensure that it has obtained all necessary consents before passing personal data to MAC Assessment and Development (Pty) Ltd for processing. Furthermore the Client consents to the processing of all data and personal information supplied to MAC Assessment and Development (Pty) Ltd for the purposes of these Conditions and the effective use of AC-EXS™ Materials.

6.2 Each party shall keep confidential all information obtained from the other pursuant to these Conditions and shall not divulge such information to another party without the other's written consent. Each party will ensure its employees; sub-contractors and agents are bound by this. This clause shall not restrict the use of information lawfully in the public domain.

6.3 The content of AC-EXS™ methods of scoring and processing results are secret and confidential and the Client must not disclose them to any third party.

## 7. Intellectual Property Rights

7.1 The Client acknowledges that AC-EXS™ Intellectual Property is the property of A&DC.

7.2 The Client's rights to AC-EXS™ Materials and A&DC Intellectual Property are strictly limited to a non-exclusive licence as expressly set out in these Conditions and any other written instructions issued to the Client by MAC Assessment and Development (Pty) Ltd.

7.3 The Client shall not reproduce or copy or vary or adapt the AC-EXS™ Materials or a substantial part of them by any means or in any way whatever, or enter the same into any kind of information retrieval system including any form of computer system. Any such act or occurrence is an infringement of A&DC Intellectual Property and may amount to a criminal offence. MAC Assessment and Development (Pty) Ltd and A&DC may take legal action against anyone who infringes its intellectual property rights.

### THE CLIENT'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 7.4

7.4 The Client shall not re-use those AC-EXS™ Materials which are designated for "one-time use only". AC-EXS™ Materials which are not to be re-used are those that relate to individual Participants or Delegates and include 'Instructions for the Participant', 'Participant Report Forms', 'Role-player Report Forms' and 'Assessor Report Forms'. If the Client is unsure of its rights in respect of any particular item it should contact MAC Assessment and Development (Pty) Ltd.

7.5 The Client acknowledges that the Trade Marks are the property of A&DC and use of the Trade Marks by the Client will at all times be in keeping with and will seek to maintain their distinctiveness

and reputation as determined by A&DC. The Client will not use the Trade Marks in any way that would bring the reputation of MAC Assessment and Development (Pty) Ltd or A&DC into disrepute.

7.6 Any goodwill in the Trade Marks arising as a result of the purchase or use of AC-EXS™ Materials by the Client shall accrue to or is hereby assigned to A&DC.

7.7 The Client will not use any mark or name confusingly similar to the Trade Marks in respect of goods similar to the AC-EXS™ Materials and will not use the Trade Marks on any goods or services other than the AC-EXS™ Materials.

7.8 The Client will not use the Trade Marks as part of any corporate business or trading name of the Client.

## 8. General

8.1 Clients will not use AC-EXS™ Materials in any way that might bring the reputation of MAC Assessment and Development (Pty) Ltd or /A&DC into disrepute. If a Client does something to bring MAC Assessment and Development (Pty) Ltd or A&DC into disrepute MAC Assessment and Development (Pty) Ltd and A&DC reserve the right to withdraw MAC Assessment and Development (Pty) Ltd services and AC-EXS™ Materials and repossess any AC-EXS™ Materials previously distributed.

8.2 MAC Assessment & Development (Pty) Ltd. and A&DC reserve the right to waive a breach of these Conditions. However under no circumstances should this be considered as a waiver of any subsequent breach of the same or other conditions.