

# Katestone Environmental Pty Ltd MODELLING AND SIMULATION TOOLS Terms and Conditions of Use

## 1. ACCEPTANCE OF TERMS AND CONDITIONS

1.1 The provision by Katestone of its Modelling and Simulation Tools is subject to these conditions of use, which you must comply with at all times. Katestone may terminate your access immediately if you do not comply with these terms and conditions.

## 2. RIGHT TO USE

You have a non-exclusive right to use the Tool to which Katestone has provided you access for the period agreed with Katestone. You must not authorise, facilitate or allow use of the Tool by any person who is not permitted access by Katestone, unless authorised in writing.

The intellectual property rights in the Tool including text, images, software, logos, icons, and code, are owned by or licensed to Katestone. Nothing in these terms and conditions assigns intellectual property rights to you.

You will not copy, reproduce, translate, adapt, vary or modify any aspect of the Tool without the express consent of Katestone.

You will not use any other software, process or means in conjunction with the Tool to access, retrieve, scrape, query, extract or create an index to:

- (a) determine the manner in which the Tool operates;
- (b) extract data or otherwise use the Tool than the purpose for which you have been given access;
- (c) construct or develop a tool or database that competes with Katestone in any manner;

You will not link to or embed a Katestone Tool as part of another website or program without the written consent of Katestone.

## 3. RELIANCE

You acknowledge that you have exercised your independent judgement in deciding to use the Tool and have not relied on any term, condition, representation, warranty, matter, statement or conduct which is not expressly stated in these terms and conditions.

You acknowledge that there is an inherent risk in the accuracy of any information or forecasts produced using the Tool and that if you rely on the information or forecasts generated by the Tool, you do so at your own risk.

## 4. MAINTENANCE AND SUPPORT

You are responsible for obtaining and maintaining the hardware, software and internet access to access the Tool and are responsible for that hardware, software and internet access meeting any minimum specifications published or supplied by Katestone from time to time.

Katestone may add to, remove from, replace, modify, improve or develop the Tool (including any content); or its network, equipment or software that it uses to make the Tool available to you at any time.

You acknowledge that the Tool cannot be guaranteed error free and that access may not always be available. Katestone will reasonably endeavour to provide support services to assist with any routine problems with the use of the Tool, but makes no warranties or representations in relation to support. You may engage Katestone under a Consultancy Services Agreement if you require additional advice, training or support in relation to the Tool.

## 5. INDEMNITY

You indemnify Katestone from all loss, liability or damage suffered by or claimed against Katestone resulting from:

- (a) a breach of these terms and conditions by the you;
- (b) your acts or omissions or any other person for whom you are liable;
- (c) any claim by a third party made against Katestone arising out of your use of the Tool.

## 6. LIABILITY

To the extent permitted by law, any condition or warranty which would otherwise be implied in these terms and conditions whether by statute or otherwise is hereby excluded. Where legislation implies in this agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under the condition or warranty, the condition or warranty is deemed to be included in this agreement. However, to the extent permitted by law, the liability of Katestone for any breach of the condition or warranty is limited, at the option of Katestone, to one or more of the following:

- (a) if a breach relates to goods:
  - i. the replacement of the goods or the supply of equivalent goods;
  - ii. the repair of the goods;
  - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods;  
or
  - iv. the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
  - i. the supplying of the services again; or
  - ii. the payment of the cost of having the services supplied again.

Katestone's liability for breach of this agreement, or in tort or for any other common law or statutory cause of action:

- (a) is limited in the aggregate to the amount paid by the User to Katestone for use of the Tool; and
- (b) does not include any special, incidental, indirect, exemplary, punitive or consequential damages, loss of revenue, loss of profits, loss of production, loss of data, loss of goodwill or credit, loss of reputation or future reputation or publicity, loss of use, loss of interest, damage to credit rating, loss or denial of opportunity, loss of anticipated savings, or increased or wasted overhead costs; or which relates to additional expenses incurred or rendered futile; or which is not a natural or immediate consequence of the cause of action; or which is suffered as a result of a claim by a third party; or which consists of a claim for personal injury or damage to property, even if Katestone was aware of the possibility of the Excluded Loss.

## **7. GENERAL**

No right of Katestone under these terms and conditions is deemed waived except by notice in writing.

If any of these terms and conditions are held to be invalid, unenforceable or illegal for any reason, the remaining terms and conditions shall nevertheless continue in full force.

These terms and conditions are governed by and construed in accordance with the law of Queensland and the parties submit to the jurisdiction of the courts of Queensland.