



## **Tools for the Smart Trader Course - Agreement with Terms & Conditions**

### **1. Definitions**

In this Tools for the Smart Trader Agreement (the "Agreement"), unless inconsistent with or otherwise indicated by the context: -

- 1.1 "Commencement Date" means the date upon which this Agreement is electronically accepted by the Purchaser;
- 1.2. "Contract Price" means the purchase price payable by the Purchaser to SMC for the Tools for the Smart Trader course;
- 1.3. "Training" means training on MetaTrader 5, which entails:
  - 1.3.1 Access to the Online Learning Management System for the Tools for the Smart Trader course ("the Tools for the Smart Trader Training"), will be given to the Purchaser on confirmation of initial payment required and continue for 12 consecutive months subject to successful payment by the Purchaser.
  - 1.3.2. Support in the form of training in respect of the Tools for the Smart Trader Training, which is available online, and which support is included in the Contract Price for the full 12 months of this Agreement.
- 1.4. "Party" or "parties" means individually or collectively, as the context may require, SMC and the Purchaser;
- 1.5. "Purchaser" means the person, company, firm, partnership, or any other entity, including its successors or assigns, identified in the online registration form, who will be responsible for the payment of the Tools of the Smart Trader Training and who will be partaking in the course.
- 1.6. "Agreement" means the training agreement between SMC and the Purchaser in relation to the Tools for the Smart Trader Training of the Purchaser by SMC, including the online registration form, these Terms and Conditions, and the General Terms and Conditions set out below;
- 1.7. "Seller" means Harzel, Inc., trading as Stock Market College, Tax ID: 38-4206335, a corporation with limited liability duly registered and incorporated in terms of the laws of the State of Delaware in the United States of America with the address of Suite 206, 651 N Broad St, Middletown, New Castle County, State of Delaware, United States of America.
- 1.8. "SMC" means Harzel, Inc., trading as Stock Market College, Tax ID: 38-4206335, a C corporation with limited liability duly registered and incorporated in terms of the laws of the State of Delaware in the United States of America with the address of Suite 206, 651 N Broad St, Middletown, New Castle County, State of Delaware, United States of America.
- 1.9 In this Agreement:
  - 1.9.1 clause headings are for reference purposes only and shall not affect its interpretation;
  - 1.9.2 references to natural persons shall include bodies corporate, other legal personae, associations, partnerships, trusts and other business entities, and vice versa;
  - 1.9.3 references to the singular shall include the plural and vice versa;
  - 1.9.4 any word or expression importing the masculine gender shall include the feminine, the neuter, and vice versa;
  - 1.9.5 the rule of construction that the Agreement shall be interpreted against the party responsible for the drafting or preparation thereof shall not apply;
  - 1.9.6 if any definition in the Agreement confers rights or imposes obligations on any party, such provisions shall be given effect to as if it is a substantive provision in the body of the Agreement; and



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1.9.7 the expiration or termination of the Agreement shall not affect such of the provisions thereof as expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## **2. Contract Price and Payment**

2.1. The Contract Price set out in the online registration form shall be payable by the Purchaser to SMC. The Purchaser shall elect the method by which he will pay the Contract Price or any part or balance thereof, which may be by credit/debit card, and shall duly give effect to such elected payment method.

2.2. Should the Purchaser pay any part of the Contract Price in instalments by credit/debit card, the Purchaser shall complete and electronically sign, the credit/debit card authorization in the online registration form, the Purchaser undertaking to instruct his bank, to effect payment of such instalments by credit/debit card, provided that if the Purchaser terminates such credit/debit card authorization, the Purchaser shall nevertheless remain liable for payment of the Contract Price by other means on-demand.

2.3 The Purchaser acknowledges that the contract price allows access to the Tools for the Smart Trader course for a period of 12 months.

2.3. Should a third party who authorized payment of the Contract Price or any part thereof using his credit/debit card to terminate such payment/s, all payments made under such authorization shall be deemed to be payments made by the Purchaser, and such termination shall be deemed to be that of the Purchaser, who shall remain liable for the payment of the Contract Price, or deposit or instalments or the balance thereof by other means.

2.4. Should the Purchaser fail to pay the Contract Price or any part thereof on the due date thereof, then, without derogating from any of the other rights of SMC, the Contract Price or any part of the balance thereof shall immediately and without notice become due and payable, and the Purchaser shall be liable unto SMC for the interest of 10% per annum on the full amount due.

2.5. Should SMC not be able to reach the Purchaser at any of the contact details given in this agreement, be it by telephone, mobile, email, or post, the Purchaser consents to the SMC performing a trace on the Purchaser records on all Credit Bureau Databases solely to get the most recent contact details to get into contact with the Purchaser.

## **3. Delivery**

3.1. Notwithstanding any other provision to the contrary, the Seller shall deliver the Tools for the Smart Trader course to the Purchaser, and access to the Online Learning Management System only to him against receipt or clearance of the Contract Price or the part thereof due.

3.2. Delivery of the Tools for the Smart Trader course shall be affected by the Purchaser choosing an email address, creating a Password, and electronically signing the agreement on the online registration form, which will allow the Purchaser access to the Online Learning Management System, which contains the Tools for the Smart Trader course.

3.3. The Purchaser acknowledges that he shall confirm the purchase and electronically sign the agreement (after he has chosen an email address and created a password) by clicking on the button called "Complete my Purchase" shown on the online registration form.

General Terms and Conditions

## **4. Limitation of Liability**



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4.1. "Password", means an electronic password of the Purchaser's choosing which gives the Purchaser access to Online Learning Management System containing the Tools for the Smart Trader course);

4.2. Neither SMC, nor any of their employees, Affiliates, Introducing brokers or Distributors ("SMC") shall be liable for any loss or damage, either direct, indirect or consequential, suffered by the Purchaser or any other person as a result of (i) any investment or financial decision by him based on the use of the Tools for the Smart Trader course and training materials, (ii) any action or omission, including any failure or delay, or the provision of any information, either correctly or incorrectly, or any mistake, error or omission by or on the part of SMC (iii) from the use of the Tools for the Smart Trader course and materials (iv) any computer virus or security breach, including computer hacking which may result in damage, destruction, alteration or corruption of any device, program or systems of or used by the Purchaser (v) causes beyond the control of SMC, unless the Purchaser can show that the loss or damage suffered by him is a direct result of any wilfulness or gross negligence on the part of SMC.

4.3 The reason for the limitation of liability set out above is the fact that the use of the Tools for the Smart Trader course and training material calls for a value judgment on the part of the Purchaser, over which SMC has no control.

## **5. Warranties and Acknowledgments**

5.1. The Purchaser by his signature to the Agreement warrants, acknowledges or confirms that (i) all of the information pertaining to him as specified in the online registration form is true and correct, and that he has the capacity and authority to enter into the Agreement (ii) he satisfied himself that the box in the online registration form has been correctly ticked (iii) he was given the opportunity to satisfy himself of the scope and content of the Tools for the Smart Trader course with reference to a training index and overview and the support facility of the SMC website prior to his electronic signature and satisfied himself with the Tools for the Smart Trader course for his purposes (iv) he must satisfy himself prior to conclusion of the Agreement that his computer and programs (including capacity) are compatible with and suitable for the Tools for the Smart Trader course and training materials, SMC accepting no responsibility in that regard, and (v) he read or was given the opportunity to read the Agreement prior to signature thereof.

## **6. Intellectual Property Rights**

6.1. Save as expressly otherwise stated in the Agreement, all rights, title, and interest in and to all trade names, trademarks, logos, copyrights, and other intellectual property rights used or embodied in or relating to the Tools for the Smart Trader course and materials, (collectively "intellectual property") shall be and remain the sole property of SMC or its suppliers.

6.2. The Purchaser shall not be entitled to reproduce, distribute, disseminate, sell, publish, broadcast, or copy the intellectual property in any way whatsoever.

6.3. The Purchaser undertakes that he shall not at any time in any way question or dispute the ownership of the intellectual property, perform any act that would injure the reputation or goodwill attaching to the intellectual property, infringe or prejudice such rights, and always abide by all laws applicable to the intellectual property.

## **7. Breach of Contract**

7.1. Should the Purchaser breach any term or condition of the Agreement or any warranty given by him thereunder, or fail to fulfil any of his obligations in terms thereof, including any failure to pay the Contract Price, or any part thereof when due, owing and payable, or should the Purchaser be sequestered or liquidated, whether provisionally or finally, and whether voluntarily or compulsory, then without prejudice to SMC's other rights in law, SMC shall be entitled forthwith and without notice to the Purchaser to cancel the Agreement, or to demand specific performance by the Purchaser of all his obligations in



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terms thereof, including the right to demand immediate payment of all sums of money (including future instalments) owing by Purchaser, whether or not then due, but in either event without prejudice to SMC's right to claim such damages as it may have suffered because of any breach or failure by the Purchaser.

7.2. In the event of SMC or the Purchaser instituting legal proceedings against the other under the Agreement, the party to whom a cost order is granted shall be entitled to his costs on the scale as between attorney and own client, including collection costs.

## **8. General Provisions and Interpretation**

The parties acknowledge and agree that:-

8.1. save for terms implied by law, the Agreement constitutes and contains the entire agreement between them regarding the matters therein dealt with, and no provisions, terms, conditions, stipulations, warranties, or representations of whatsoever nature, whether express or implied, have been agreed to or made by any of the parties or on their behalf except as are recorded herein, SMC confirming that none of its employees, agents or other representatives is authorized to give the Purchaser any advice of a financial nature, or to make any promises or representations of any nature, verbal or in writing to the Purchaser in respect of the Tools for the Smart Trader course and training material or any other matter, other than as contained in the Agreement or SMC's Promotional Material;

8.2. no relaxation, extension of time, indulgence or leniency of time, which SMC may show to the Purchaser shall in any way constitute a waiver by SMC of any of its rights under the Agreement, and SMC shall not thereby be prejudiced or stopped from exercising any of its rights against the Purchaser which may by then already have arisen or which may arise thereafter;

8.3. no alteration, variation, amendment, or purported consensual cancellation of the Agreement or this clause, or any waiver thereof shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties hereto;

8.4. the rights and/or obligations of the Purchaser in terms of the Agreement may not be ceded or assigned to any third party without SMC's prior written consent. The rights and obligations of SMC in terms of the Agreement may be ceded, assigned, and or delegated by it to any other person on written notice to Purchaser, provided that should the Purchaser's consent be required, such consent shall not unreasonably be withheld;

8.5. the Agreement and all matters and disputes arising therefrom or incidental thereto shall be governed by and be construed by the laws of the State of Delaware in the United States of America;

8.6. the parties consent to the non-exclusive jurisdiction of the courts of Delaware in the United States of America.

8.7. a certificate signed by any director or accountant of SMC certifying the sum of any amount due, owing, and/or payable by the Purchaser to SMC, or any other fact about the Agreement, shall be prima facie proof of its contents and sufficient proof for any judgment or order, or any other proceedings;

8.8. if a court or other competent authority having jurisdiction finds that any term or condition of the Agreement is unenforceable, illegal, void, or contrary to public policy, such term or condition shall not affect whatsoever upon the binding force or effectiveness of the remainder of the Agreement, it is the intention and declaration of the parties that they, even with knowledge of such unenforceability, illegality, invalidity or avoidance at the Commencement Date, would have entered into a contract containing all other terms and conditions set out in the Agreement;

8.9. the Purchaser chooses as their domicilia citandi et executandi ("domicilium") their physical address appointed in the online registration form for all purposes arising out of or in connection with the Agreement;

8.10. SMC choose as their domicilia citandi et executandi ("domicilium") their physical address of Suite 206, 651 N Broad St, Middletown, New Castle County, State of Delaware, United States of America;



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8.11. a party may from time to time by written notice to the other vary his domicile to another address, which is not a post office box or poste restante. Such notified address shall become the domicile of that party within 7 (seven) days of the other party receiving such notification;

8.12. any notice given by a party to the other party ("addressee") which:-

8.12.1. is delivered or made by hand during normal business hours at the addressee's physical address/domicile, for the time being, shall be presumed to have been received by the addressee at the time of delivery, provided that the presumption shall only apply if written proof of receipt is obtained by the delivering party, and duly produced on demand;

8.12.2. is posted by prepaid registered post from an address to the addressee's postal address or domicile, shall be presumed to have been received by the addressee on the seventh (seventh) day after the date of posting;

8.13. all notices by a party to the other in terms of the Agreement must be in writing, and where in terms of the Agreement any communication is required to be in writing, the term writing may include communications by email, provided that receipt thereof by the addressee must be proven by the production of an email transmission report, and the direct or indirect admission of receipt thereof by the addressee by return of email;

8.14. SMC records telephone calls made or received by SMC to or from the Purchaser, who agrees to such recordings;