



Last updated 29 September 2023

## Terms and Conditions

Unless otherwise agreed, these terms and conditions (the “Terms”) apply to all orders which you the customer (“You” or “Your”) place with Elearn Here Limited trading as Elearn Here Direct (“We”, “Us” or “Our”). We are a company incorporated and registered in England and Wales with company number 12311981 whose registered office is at Kemp House. 124 City Road, London EC1V 2NX. Our registered VAT number is GB359203888.

We are the entire legal and beneficial owner of online courses which we make available under licence to You for Your own use on the terms and conditions set out below.

These Terms apply to You whether you are a Business Customer or a Consumer Customer. However, if You are a Consumer Customer, clause 10.1(b) shall not apply to You.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms the words defined in the preamble above shall bear the meanings given there and otherwise the following definitions and rules of interpretation apply:

**Affiliate:** includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party or any business entity from time to time controlling, controlled by, or under common control with, either party.

**Agreed Purpose:** to provide online training via the Courses.

**Access Page:** the web page on the Site via which You can order a Course or Courses.

**Business Customer:** a customer who orders a Course or Courses for training purposes in relation to any business, trade or profession carried on by the customer.

**Consumer Customer:** a customer who orders a Course of Courses for their own personal use and not in connection with any business, trade or profession carried on by the customer.

**Content:** all text, visual or audio content that is made available by Us online on the Site.

**Contract:** the contract between You and Us that comes into force when you register with Us on the Site under clause 2.1 on the basis of these Terms.

**Course:** an online educational course which is hosted on the Platform.

**Fee:** the fee specified on the Site to purchase a licence for each course purchased plus VAT.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

**The Site:** the website which hosts the Platform via which the Courses can be accessed and which can be located at the url:[www.elearnheredirect.uk](http://www.elearnheredirect.uk).

**Software:** all code relating to the functioning of the Site, the Platform and each Course.

1.2 Paragraph headings shall not affect the interpretation of this agreement.

1.3 Unless the context otherwise requires:

- (a) words in the singular shall include the plural and in the plural shall include the singular;
- (b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (c) a reference to one gender shall include a reference to the other genders; and
- (d) any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

## **2. PURCHASE OF LICENCES**

2.1 You can purchase a licence for a Course via the Access Page on the Site upon payment of the applicable Fee. On purchasing a Course with us for the first time, you will be required to register an account with Us. Upon registration, a contract between You and Us will come into existence incorporating these Terms.

## **3. LICENCE**

3.1 All Courses purchased for Your use are licensed to You for use on a non-exclusive basis subject to the following terms and conditions:

- (a) You may only operate the Licence for the Agreed Purpose.
- (b) You may not (and shall not permit any third party) to:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software relating to or the

Content of Our Courses or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Content.

(ii) access all or any part of the Software or the Content Services in order to build a product or service which competes with us (or any part of them).

3.2 You will not:

- (a) sub-license, assign or novate the benefit or burden of the Licence in whole or in part;
- (b) allow the Software to become the subject of any charge, lien or encumbrance; and
- (c) deal in any other manner with any or all of Your rights and obligations under this agreement.

#### **4. YOUR OBLIGATIONS**

4.1 During Your use of the Site, You may not access, store, distribute or transmit any viruses, or any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; or is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity, and we reserve the right, without liability to you, to disable your access to any material that breaches the provisions of this clause.

#### **5. OUR OBLIGATIONS**

5.1 Subject at all times to clause 6 below, we will ensure that the latest version of the Courses is made available to You on the Site.

5.2 Our only support obligation to You is to provide technical support to You if you require help accessing the Courses or registering via our email support service at [help@elearnheredirect.uk](mailto:help@elearnheredirect.uk).

#### **6. THE COURSES**

6.1 Any descriptions, specifications, advertising material or overview information in relation to a Course is published for the sole purpose of giving an approximate description of the Courses. They will not form part of the Contract or have any contractual force. The Courses delivered may differ in non-material respects from any information provided. Any typographical, clerical or other error or omission in any description, sales literature, price list, Proposal or invoice issued by us will be subject to correction without liability on our part.

6.2 We may amend the Courses from time to time without notice to You, including (without limitation) where required by any applicable statutory or regulatory requirement or if the amendment will not materially affect the nature or quality of the Courses.

6.3 We do not give any representation, warranty or undertaking in relation to the Courses. Any representation, undertaking, condition or warranty which might be implied or incorporated into these terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, we will not be responsible for ensuring that a Course is suitable for your purposes and do not guarantee any specific results from participating in a Course.

## 7. LIMITS OF LIABILITY

7.1 Except as expressly stated in clause 7.2:

(a) We shall not in any circumstances have any liability for any losses or damages which may be suffered by You (or any person claiming under or through You), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

(i) special damage even if We were aware of the circumstances in which such special damage could arise;

(ii) loss of profits;

(iii) loss of anticipated savings;

(iv) loss of business opportunity;

(v) loss of goodwill;

(vi) loss or corruption of data.

(b) Without prejudice to clause 7.1 (a) above, if You are a Consumer Customer We are not liable for business losses. We only supply Courses to you for private and domestic use.

(c) Our total liability, whether in contract, tort (including negligence) or otherwise and whether in connection with these terms or any collateral contract, shall in no circumstances exceed a sum equal to the Fee paid for the Course supplied to You; and

(d) You agree that, in contracting on these terms, either You did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in these terms or (if You did rely on any representations, whether written or oral, not expressly set out in these terms) that You shall have no remedy in respect of such representations and (in either case) We shall have no liability in any circumstances otherwise than in accordance with the express terms of these terms.

7.2 The exclusions in clause 7.1 shall apply to the fullest extent permissible at law, but We do not exclude liability for:

(a) death or personal injury caused by Our negligence, Our officers, employees, contractors or agents;

(b) fraud or fraudulent misrepresentation;

(c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(d) any other liability which may not be excluded by law.

7.3 We try to ensure that our Site is always available to You. If the Site is unavailable at any time and for any period (for whatever reason) we shall not be liable to you for any losses suffered or incurred as a result.

7.4 All references to Us in this clause 7 shall, for the purposes of this clause and clause 16 only, be treated as including all of Our employees, subcontractors and our Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 15.

7.5 This clause will survive termination of the Contract.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 You acknowledge that all Intellectual Property Rights in the Courses including course content (including any later versions of the Courses) and in the Software ("Protected IPR") belong and shall belong to Us or the relevant third-party owners (as the case may be) and You shall have no rights in or to the Protected IPR other than the right to use it in accordance with these terms.

8.2 We undertake at Our own expense to defend You or, at Our option, settle any claim or action brought against You alleging that the possession or use of the Protected IPR (or any part thereof) in accordance with these terms infringes the UK Intellectual Property Rights of a third party (Claim) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against You as a result of or in connection with any such Claim. For the avoidance of doubt, clause 8.2 shall not apply where the Claim in question is attributable to possession or use of the Protected IPR (or any part thereof) by You other than in accordance with these terms, use of the Protected IPR in combination with any hardware or software not supplied or specified by Us if the infringement would have been avoided by the use of the Protected IPR not so combined, or use of a non-current release of the Protected IPR.

8.3 If any third party makes a Claim, or notifies an intention to make a Claim against You, Our obligations under clause 9.2 are conditional on You:

- (a) as soon as reasonably practicable, giving written notice of the Claim to Us, specifying the nature of the Claim in reasonable detail;
- (b) not making any admission of liability, agreement or compromise in relation to the Claim without Our prior written consent (such consent not to be unreasonably conditioned, withheld or delayed).

8.4 If any Claim is made, or in Our reasonable opinion is likely to be made, against You, We may at Our sole option and expense:

- (a) procure for You the right to continue to use the Protected IPR (or any part thereof) in accordance with the terms of this Licence;
- (b) modify the Protected IPR so that it ceases to be infringing;
- (c) replace the Protected IPR with non-infringing software; or
- (d) terminate your right to use the Protected IPR immediately by giving you notice in writing.

8.5 This clause 8 constitutes Your exclusive remedy and Our only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 8.1.

## **9. SUSPENSION**

9.1 Without prejudice to any of our other rights or remedies, we may suspend Your access to the Site and/or the right to purchase Licences immediately if We at any time reasonably believe that:

- (a) You are in breach of the Contract;
- (b) You breach our privacy policy or create a security risk to Us or any third party; or
- (c) Your usage adversely impacts Our systems, Our Content or any of Our other clients.

9.2 We shall only be obliged to lift any suspension pursuant to this clause 90 if you have remedied the cause to our reasonable satisfaction.

9.3 You shall remain liable for our Charges notwithstanding any suspension in accordance with this clause 9.

## **10. TERMINATION**

10.1 We may terminate the Contract and withdraw Your access to the Courses if You

(a) commit a material breach of the Contract which, if capable of remedy, has not been remedied within 20 days of being notified to do so; or

(b) If you are a Business Customer and are subject to an Insolvency Event.

10.2 Termination of the Contract will not affect Your or Our rights and remedies that have accrued as at termination.

10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

## **11. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **12. REMEDIES**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **13. ENTIRE AGREEMENT**

13.1 These terms contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

13.2 Nothing in this clause shall limit or exclude any liability for fraud.

## **14. SEVERANCE**

14.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

14.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal,

valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **15. THIRD-PARTY RIGHTS**

15.1 The Contract is between You and Us. No other person has any rights to enforce any of its terms save that Our Affiliates shall be entitled to rely upon and enforce the exclusions and limitations in the Contract.

## **16. NO PARTNERSHIP OR AGENCY**

16.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

16.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **17. FORCE MAJEURE**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for four weeks, the party not affected may terminate this agreement by giving immediate written notice to the affected party.

## **18. NOTICES**

18.1 Any notice given to a party under or in connection with these terms contract shall be sent by email to the email address provided from time to time by each party to the other.

## **19. GOVERNING LAW AND JURISDICTION**

19.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

19.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).