

TERMS AND CONDITIONS

1. Definitions

Seller	means EvoLearn Ltd a company registered in England and Wales under company number 8160758 whose registered office is at 264 Banbury Road, Summertown, Oxford, OX2 7DY, United Kingdom and whose VAT registration number is GB139 8251 88.
Buyer	the person who buys or agrees to buy the Services from the Seller.
Conditions	the terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing by the Seller.
Price	the price for the Services excluding VAT.
Force Majeure Event	has the meaning set out in clause 16.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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.
Order	the Buyer's order for the supply of Services, as set out in the Buyer's purchase order, the Buyer's written acceptance of the Seller's quotation, the Seller's order form, or any other document, and/or otherwise mutually agreed by the Buyer and Seller.
Services	the services supplied by the Seller to the Buyer as set out in the Order.
Seller Materials	has the meaning set out in clause 12.1.6

2. Conditions

- 2.1 These Conditions shall form the basis of the contract between the Seller and the Buyer in relation to the sale of Services, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.
- 2.2 All orders for Services shall be deemed to be an offer by the Buyer to purchase Services from the Seller pursuant to these Conditions.

- 2.3 Acceptance of the commencement of the Services shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 These Conditions may not be varied except by the written agreement of the Seller.
- 2.5 These Conditions represent the whole of the agreement between the Seller and the Buyer. They supersede any other conditions previously issued.

3. Price

The Price shall be the price as stated in the Buyer's Purchase Order, Seller's Quote, Seller's Order, or any other document. Unless stated otherwise, the Price agreed for the Services do not include travel, accommodation and subsistence expenses, nor the cost of time spent travelling incurred in the provision of the Services for which the Seller shall charge the Buyer at its or its sub-contractors' (as applicable) then current rates, available on request.

4. Payment and Interest

- 4.1 Payment of the Price and VAT shall be due within 30 days of the date of the Seller's invoice.
- 4.2 Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of 8% per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment.
- 4.3 The Buyer shall pay all accounts in full and not exercise any rights of set-off or counterclaim against invoices submitted by the Seller.

5. Services

- 5.1 The Services are described in the Order.
- 5.2 The Seller reserves the right to amend or change the specification of the Services if required by any applicable statutory or regulatory requirements.

6. Warranties

- 6.1 The Seller warrants that the Services provided under these Terms will be provided in a diligent and professional manner, with reasonable care and skill.
 - 6.1.1 conform with their description;
 - 6.1.2 be carried out in accordance with the Supply of Goods and Services Act 1982.

11. Supply of Services

- 11.1 The Seller shall provide the Services to the Buyer.
- 11.2 The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 11.3 The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially

affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.

12. Buyer's Obligations

- 12.1 The Buyer shall:
 - 12.1.1 Ensure that the terms of the Order are complete and accurate;
 - 12.1.2 Co-operate with the Seller in all matters relating to the Services;
 - 12.1.3 Provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises as reasonably required by the Seller to provide the Services;
 - 12.1.4 Provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 12.1.5 Obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - 12.1.6 Keep and maintain all materials, equipment, documents and other property of the Seller (Seller Materials) at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation.
- 12.2 If the Seller's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (Buyer Default):
 - 12.2.1 the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
 - 12.2.2 the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 12.2; and
 - 12.2.3 The Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

13. Intellectual Property Rights

- 13.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Seller.
- 13.2 The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Seller obtaining a written licence from the relevant licensor on such terms as will entitle the Seller to license such rights to the Buyer.

13.3 All Seller Materials are the exclusive property of the Seller

14. Limitation of Liability

14.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

14.1.2 fraud or fraudulent misrepresentation;

14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

14.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

14.1.5 defective products under the Consumer Protection Act 1987.

14.2 Subject to clause 14.1:

14.2.1 The Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

14.2.2 the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 125% of the Price paid by the Buyer in the last 12 months in respect of the services to which the claim(s) relate.

14.3 This clause 14 shall survive termination of the Contract.

15. Termination

15.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than 14 days' written notice.

15.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

15.2.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;

15.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or being a company or limited liability partnership is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or being an individual is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or being a partnership has any partner to whom any of the foregoing apply;

15.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters

- into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- 15.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - 15.2.5 The other party (being an individual) is the subject of a bankruptcy petition or order;
 - 15.2.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 15.2.7 An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - 15.2.8 The holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 15.2.9 A person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 15.2.10 Any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.2 to clause 15.2.9 (inclusive);
 - 15.2.11 The other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - 15.2.12 the other party's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 15.2.13 The other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 15.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 15.4 Without limiting its other rights or remedies, the Seller may suspend the supply of Services under the Contract or any other contract between the Buyer and the Seller if the Buyer fails to pay any amount due under this Contract on the due date for payment, the Buyer becomes subject to any of the events listed in clause 15.2.2 to clause 15.2.13, or the Seller reasonably believes that the Buyer is about to become subject to any of them.

- 15.5 On termination of the Contract for any reason:
- 15.5.1 the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
 - 15.5.2 The Buyer shall return all of the Seller Materials and any Deliverables which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 15.5.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 15.5.4 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

16. 16. Force Majeure

- 16.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Seller including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Seller or any other party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, epidemic or similar events, or default of suppliers or subcontractors.
- 16.2 The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 16.3 If the Force Majeure Event prevents the Seller from providing any of the Services for more than 14 days, the Seller shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

17. General

- 17.1 Notices.
- 17.1.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
 - 17.1.2 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 17.2 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its

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.

- 17.3 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 17.4 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 17.5 This Contract contains the entire agreement and understanding of the parties relating to the subject matter of this Contract and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral.
- 17.6 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Seller.
- 17.7 Governing law. 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.
- 17.8 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).