



Alpaca E-Learning Terms and Conditions

Last updated: August, 2020

Please read these terms and conditions carefully before using Our Services and/or Products.

Application and Entire Agreement

1. These Terms and Conditions apply to the provision of the services and/or products detailed in our quotation by ALPACA E-LEARNING Ltd., a Company registered in under the number 12729061 whose registered office is 48 Waterman Way, E1W 2QW (**we** or **us** as Service Provider) to the person buying the services (**you** or **Customer**).
2. You are deemed to have accepted these Terms and Conditions when you accept our quotation or from the date of any performance of the Services and/or Products (whichever happens earlier) and these Terms and Conditions and our quotation (**the Contract**) are the entire agreement between us.
3. You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf. These Conditions apply to the Contract to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

Interpretation

4. A "business day" means any day other than a Saturday, Sunday or bank holiday in England and Wales.
5. The headings in these Terms and Conditions are for convenience only and do not affect their interpretation.
6. Words imparting the singular number shall include the plural and vice versa.
7. "Services" refers to the provision of consultation services which might be conducted individually or as part of a solution.
8. "Products" can be "systems" or "content"; it refers to any "medium", "material", "content" and or "deliverable" which results from the provision of our services.
9. "Systems" are the medium through which content is delivered, such as a module, programme, website, or app.
10. "Content" refers to "material" which is readable, useful, and contains a relevant message that is understood by a user. It can be composed of audiovisuals and written word.

Services

11. We warrant that we will deliver our services to the best of our abilities and in line with the professional codes of conduct pertinent to the specific labour required. Any presumed breach of the code of conduct will be investigated and dealt with accordingly.
12. We will use our reasonable endeavours to complete the performance of the Services within the time agreed or as set out in the quotation; however, time shall not be of the essence in the performance of our obligations.
13. All of these Terms and Conditions apply to the supply of any Services unless we specify otherwise.

Systems

14. The content of the products will be proprietorship of **US**, except when the content, colours or concept is provided by **YOU**.
15. WE assume the Customer satisfaction to be fulfilled once the last deliverable has been signed off.
16. WE will be liable for up to 3 revisions per deliverable prior to signoff, any extra revisions should be charged as extra services unless otherwise specified by US.
17. WE will provide customer support and debugging services at no charge during the first year of use.
18. WE are not liable to offer customer support due to a malfunction presented with our product in relation to changes in the system or third party software interventions.
19. WE will not assume the costs of doing upgrades or optimisations after the final product has been signed off.

Content

20. The content of the products will be proprietorship of **US**, except the elements of the content, colours or concept that are provided by **YOU**.
21. WE assume the Customer Satisfaction Guarantee to be fulfilled once the last deliverable has been signed off.
22. WE will be liable for up to 3 revisions per deliverable prior to signoff, any extra revisions should be charged as extra services unless otherwise specified by US.

Your Obligations

23. You must obtain any permissions, consents, licenses or otherwise that we need and must give us any or all relevant information, materials, properties and any other matters which we need to provide the Services and/or Products. WE are not liable for any third-party claims of intellectual property violation if the permissions, consents, licenses have not been properly procured.
24. If you do not comply with clause 23, we can terminate the Services and/or Products with no further compensation to either party, unless required for legal processes.
25. We are not liable for any delay or failure to provide the Services and/or Products if this is caused by your failure to comply with the provisions of this section (**Your obligations**).

Fees

26. The fees (**Fees**) for the services and/or products are set out in the quotation and not time and materials basis.
27. In addition to the Fees, we can recover from you a) reasonable incidental expenses including, but not limited to travelling expenses, hotel costs, subsistence in any associated expenses, b) the cost of services provided by third parties and required by us for the performance of the Services and/or Products, and c) the cost of any materials required for the provision of the Services and/or Products.
28. You must pay us for any additional services and/or Products provided by us that are not specified in the quotation in accordance with our then current, applicable rate in effect at the time of performance or such other rate as may be agreed between us. The provisions of clause 26 also apply to these additional services.
29. The Fees are of any applicable VAT and other taxes and levies which are imposed or charged by any competent authority.

Cancellation and Amendment

30. We can withdraw, cancel or amend a quotation if it has not been accepted by you, or if the Services have not started, within a period of 7 days from the date of the quotation, (unless the quotation has been withdrawn).
31. Either you or we can cancel an order for any reason prior to your acceptance (or rejection) of the quotation.
32. If you want to amend any details of the Services you must tell us in writing as soon as possible. We will use reasonable endeavours to make any required changes and additional costs will be included in the Fees and invoiced to you.
33. If, due to circumstances beyond our control, including those set out in the clause below (**Circumstances beyond a party's control**), we have to make any change in the Services or how they are provided, we will notify you immediately. We will use reasonable endeavours to keep any such changes to a minimum.

Payment

34. We will invoice you for the payment of the Fees either:
 - a. when we have completed the Services; or
 - b. on the invoice dates set out in the quotation.
35. You must pay the Fees due within 30 days of the date of our invoice, otherwise in accordance with any credit terms agreed between us.
36. Time for payment shall be of the essence of the Contract.
37. Without limiting any other right or remedy we have for statutory interest, if you do not pay within the period set out above, we will charge interest at the rate of 23% per annum above the base lending rate of the Bank of England from time to time on the amount outstanding until payment is received in full.
38. All payments due under these Terms and Conditions must be made in full without any deduction or withholding except as required by law and neither of us can assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.
39. If you do not pay within the period set out above, we can suspend any further provision of the Services and cancel any future services which have been ordered by, or otherwise arranged with, you.

40. Receipts for payment will be issued by us only at your request.
41. All payments must be made by Direct Debit unless otherwise agreed in writing between us.
42. **Pricing Confidentiality:** Quotes and pricing terms are negotiated between Customer and ALPACA and may be unique to the Customer. Therefore, and except as otherwise provided by law, Customer hereby agrees to keep the pricing arrangement confidential with exception of Public or Non-For-Profit organisations who may reveal it in compliance with government transparency laws and procedures. Customer will not use this Confidential Information in furtherance of its business, or the business of anyone else.

Sub-Contracting and assignment

43. We can at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of our rights under these Terms and Conditions and can subcontract or delegate in any manner any or all of our obligations to any third party.
44. You must not, without any prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under these Terms and Conditions.

Termination

45. We can terminate the provision of the Services immediately if you:
 - a. Commit a material breach of your obligations under the Terms and Conditions; or
 - b. Fail to make pay any amount due under the Contract on the due date for payment; or
 - c. Are or become or, in our reasonable opinion, are about to become, the subject of bankruptcy order or take advantage or any other statutory provision for the relief of insolvent debtor; or
 - d. Enter into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with is creditors; or
 - e. Convene any meeting of your creditors, enter into voluntary or compulsory liquidation, have a receiver, manager, administrator or administrative receiver appointed in respect of your assets or undertakings or any part of them, any documents are filed with the court for the appointment of an administrator in respect of you, notice of intention to appoint on administrator is given by you or any of your directors or by a qualifying floating charge holder 9as defined in paragraph 26 of schedule B1 in the Insolvency Act 1986), a resolution is passed or petition presented to any court for your winding up for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency.

Intellectual Property

46. We reserve all copyright and any other intellectual property rights which may subsist in any products supplied in connection with the provision of the Services. We reserve the right to take any appropriate action to restrain or prevent the infringement of such intellectual property rights. Any content provided by the customer such as logo, content, or colour scheme, will be copyright or liability of the customer.

Liability and Indemnity

47. Our liability under these Terms and Conditions, and in breach of statutory duty, and in tort or misrepresentation or otherwise, shall be limited as set out in this section.
48. The total amount of our liability is limited to the total amount of Fees payable by you under the Contract.
49. We are not liable (whether caused by our employees, agent or otherwise) in connection with our provision of the Services or the performance of any of our other obligations under these Terms and Conditions or the quotation for:
 - a. Any indirect, special or consequential loss, damage, costs, for expenses or;
 - b. Any loss of profits, loss of anticipated profits, loss of business, loss of data, loss of reputation or goodwill, business interruption, or other third party claims; or
 - c. Any failure to perform any other obligations if such delay or failure is due to any cause beyond our reasonable control; or
 - d. Any losses caused directly or indirectly by any failure or your breach in relation to your obligations; or
 - e. Any losses arising directly or indirectly from the choice of Services and how they will meet your requirements or your use of the Services or any goods supplied in connection with the Services.
50. You must indemnify us against all damages, costs, claims and expenses suffered by us arising from any loss or damage to any equipment (including that belonging to third parties) caused by you or your agents or employees.
51. Nothing in these Terms and Conditions shall limit or exclude our liability for death or personal injury caused by our negligence, or for any fraudulent misrepresentation, or any other matters for which it would be unlawful to exclude or limit liability.

Data Protection

52. When supplying the Services to the Customer, the Service Provider may gain access to and/or acquire the ability to transfer, store, or process personal data of employees of the Customer.
53. The parties agree that where such processing of personal data takes place, the Customer shall be the 'data controller' and the Service Provider shall be the 'data processor' as defined in the General Data Protection Regulation (GDPR) as may be amended, extended or re-enacted from time to time.
54. For the avoidance of doubt, 'Personal Data', 'Processing', 'Data Controller', 'Data Processor' and 'Data Subject' shall have the same meaning as in the GDPR.
55. The Service Provider shall only Process Personal Data to the extent reasonably required to enable it to supply of Services as mentioned in the terms and conditions or as requested by and agreed with the Customer, shall not retain any personal data longer than necessary for the Processing and refrain from processing any Personal Data for its own or for any third party's purposes.
56. The Service Provider shall not disclose Personal Data to any third parties other than employees, directors, agents, sub-contractors or advisors on a strict 'need-to-know' basis and only under the same (or more extensive) conditions are set out in these terms and conditions or to the extent required by applicable legislation and/or regulations.
57. The Service Provider shall implement and maintain technical and organisational security measures as are required to protect Personal Data Processed by the Service Provider on behalf of the Customer.
58. For any inquiries or complaints regarding data privacy, you can email: contact@alpacalearning.co.uk

Circumstances beyond a party's control

59. Neither of us is liable for any failure or delay in performing our obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: industrial action, civil unrest, fire, flood, storms, earthquake, acts of terrorism, acts of war, pandemic, governmental action or any other event that is beyond the control of the party in question. If they delay continues for a period of 90 days, either of us may terminate or cancel the Services to be carried out under these Terms and Conditions.

Communication

60. All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
61. Notices shall be deemed to have been duly given:
- a. When delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
 - b. When sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
 - c. On the fifth business day following mailing, if mailed by national ordinary mail.
62. All notices under these Terms and Conditions must be addressed to the most recent address and email address.

No waiver

63. No delay, act or omission by a party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy nor stop further exercise of any other right, or remedy.

Severance

64. If one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that those provisions will be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

Law and jurisdiction

65. This agreement shall be governed by and interpreted according to the law of England and Wales and all disputes arising under the Agreement (including non-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the English and Welsh courts.