

# Terms & Conditions - Marketplace

(v1.10 05/19)



## 1 The main points

To help you understand these Marketplace Terms and Conditions, we highlight below the main points.

- To view a course, you need to buy USP credits. You can buy USP credits at any time from us or our authorised resellers
- Credits are valid for a period of 12 months from the date you buy them
- You exchange the credits for the right to access and view a course
- You can view the course as many times as you like within the defined access term for the product
- We own the IP in the course, so please respect that.

## 2 Definitions

In these Terms, the following words have the following meanings:

**Authorised Users** means those employees of the Purchaser who are authorised by the Purchaser to access the Product, or where the Purchaser is an individual, the Purchaser itself.

**Contract** means an agreement between the parties for access to the Products governed by these terms and conditions.

**Credits** means credits that can be purchased in advance by the Purchaser and subsequently exchanged for access to the Products.

**Fee** the charges payable by the Purchaser to purchase the Credits.

**IP Rights** means patents, patentable rights, copyright, design rights, utility models, trade marks (whether or not any of the above are registered), trade names, rights in domain names, rights in inventions, rights in data, database rights, rights in know-how and confidential information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action).

**Personal Data** means the name, email address and any other personally identifiable information relating to an Authorised User.

**Products** means the online courses as may be accessed under a Contract.

**Product Term** means the period of time for viewing the Product.

**Purchaser** means the organisation or individual purchasing Credits and accessing Products.

**USP** means Upskill People Limited, a company registered in England and Wales with company number 04926845 and registered office at Highfield Court, Tollgate Chandlers Ford, Eastleigh, Hampshire, SO53 3TY.

## 3 Basis of contract

- 3.1 These terms and conditions apply to all sales of Credits and the access to Products granted by USP. Any organisation mentioned or referenced in a Product is not a party to these terms and conditions or the Contract.
- 3.2 These terms and conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The supply of any Products to the Purchaser does not constitute acceptance of any of the Purchaser's terms and conditions and does not serve to modify the terms of the Contract.

## 4 Credits and payment

- 4.1 The Customer shall be entitled to purchase Credits at any time. Credits are valid for a period of 12 months from the date of purchase and accordingly must be exchanged for Products within such 12-month period. Credits are exchanged each time an Authorised User first accesses the Product. Credits have no value except in relation to Products, are non-refundable (except in accordance with these terms and conditions) and cannot be redeemed for cash. Credits may not be transferred to any third party. The purchase price of Credits may change and USP determines at its sole discretion the number of Credits to be exchanged for Products. Credits cannot be used to purchase part of Products. If the Purchaser's Credit balance is below the fee due for the Products, the Purchaser must purchase additional Credits to exchange for the Products.
- 4.2 Credits may be bought by credit card or if USP or the reseller agrees, by submission of a purchase order from the Purchaser. The Fee for the Credits are due immediately for credit card payments, and within 14 days of receipt of an invoice for payments following receipt of a purchase order.
- 4.3 If the Purchaser's balance of Credits falls below a certain level, USP may notify the Purchaser.

## 5 Products

- 5.1 A description of the Products available and the number of Credits required to license the Products is available on the USP website.
- 5.2 USP shall deduct the appropriate Credits from the Purchaser's Credit balance when any Authorised User first accesses the Product.
- 5.3 Subject to the terms and conditions of the Contract, USP hereby grants to the Purchaser during the Product Term, a non-exclusive, non-transferable, licence for its Authorised Users to access and view the Products for the Purchaser's own use.
- 5.4 An Authorised User who uses and accesses a Product in exchange for Credits only has the right to use and access the Product during the Product Term. Additional Credits must be exchanged if the Authorised User wishes to use and access the Product after the Product Term. The Purchaser is responsible for all acts and omissions of the Authorised Users.

## 6 Restrictions

- 6.1 The Purchaser shall not and shall ensure that the Authorised Users shall not (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Products in any form or media or by any means; (b) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties, attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Products; access the Products in order to build a product or service which competes with the Product; (c) use the Product to provide services to third parties or to compete with USP; (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Product available to any third party except the Authorised Users; and/or (e) attempt to obtain, or assist third parties in obtaining, access to the Products.
- 6.2 If there has been any breach of any part of this paragraph 5 or any other unauthorised acts or omissions in relation to the Products, without prejudice to any other right or remedy USP may have, USP may (i) suspend availability of the Products until the breach or unauthorised act or omission has been remedied; and/or (ii) charge the Purchaser for an amount equal to the fees it would have charged if such act or omission had been authorised; and/or (iii) terminate the Contract.

## 7 Purchaser obligations

- 7.1 The Purchaser shall (a) comply with all applicable laws and regulations with respect to its activities under the Contract; (b) ensure that its network and systems comply with any specifications provided by USP from time to time in order to access the Products; and (c) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to USP's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Purchaser's network connections or telecommunications links or caused by the internet except where such are caused directly or indirectly by USP or a subcontractor of USP.

## 8 IP Rights

- 8.1 The Purchaser acknowledges and agrees that USP and/or its licensors own all IP Rights in the Products. No IP Rights in the Products shall transfer to the Purchaser and/or any Authorised Users under the Contract.
- 8.2 USP confirms that it has all the rights in relation to the Product that are necessary to grant all the rights it purports to grant under, and in accordance with the Contract.

## 9 Warranties

- 9.1 USP warrants that the Products are prepared with reasonable skill and care and shall substantially comply with the description provided by USP.
- 9.2 The Purchaser acknowledges that the information provided in the Product is only a guide to good practice and is not developed specifically for the Purchaser. It is up to the Purchaser to ensure that a Product is fit for its purpose.
- 9.3 Although every reasonable effort has been made to ensure the accuracy of the content of the Product, the Product may include inaccuracies or typographical errors. USP shall be entitled to change and/or update the Product to remedy such inaccuracies or typographical errors at any time.
- 9.4 USP is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities outside of its control, including the internet, and the Purchaser acknowledges that the Product may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 9.5 All other warranties including any implied warranties of satisfactory quality, fitness for purpose or ability to achieve a particular result are hereby excluded to the fullest extent permitted by law. In the absence of fraud, no oral or written information or advice given by USP or its agents or licensees shall create a warranty or give rise to any other liability other than is given in these terms and conditions.
- 9.6 The Purchaser agrees that its sole remedy in respect of any Product that does not comply with the Contract is that USP will remedy such non-conformance as soon as reasonably practical and if in USP's reasonable opinion, it is unable to remedy such non-conformance USP shall refund any sums paid or Credits exchanged on a pro-rata basis in respect of any part of the Product that has not been viewed as the case may be.
- 9.7 The Purchaser must promptly notify USP of any non-conformance to the above warranties in order to benefit from the remedies stated above and in any event within 5 days of first access by an Authorised User.

## 10 Termination

- 10.1 These terms and condition begin on the first purchase of Credits and remain in force until the Purchaser's Credit balance is zero.
- 10.2 The right to access and view a Product starts on the first date of the Product Term and ends on the last date of the Product Term.
- 10.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate these terms and conditions if the other party: (a) commits a material breach of any of these terms and conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or (b) becomes insolvent, makes composition with its creditors, has a receiver or administrator of its undertaking or the whole or a substantial part of its assets appointed, or an is order made, or an effective resolution is passed, for its administration, receivership, liquidation, winding-up or other similar process, or has any distress, execution or other process levied or enforced against the whole or a substantial part of its assets (which is not discharged, paid out, withdrawn or removed within 28 days), or is subject to any proceedings which are equivalent or substantially similar to any of the foregoing under any applicable jurisdiction, or ceases to trade or threatens to do so.
- 10.4 On termination, the Purchaser has no right to access the Products. Any outstanding Credits shall be refunded to the Purchaser (less a reasonable administrative fee) if the Purchaser has terminated the terms and conditions in accordance with this provision.
- 10.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 11 Data protection

- 11.1 If the Purchaser is an individual, the parties agree that the USP privacy policy shall apply to the processing by USP of the Purchaser's Personal Data.
- 11.2 If the Purchaser is an organisation, the parties acknowledge that for the purposes of the applicable data protection legislation, the Purchaser is the controller and USP is the processor (where controller and processor have the meanings as defined in the applicable data protection legislation) and the remainder of this clause 11 shall apply.
- 11.3 The Purchaser will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to USP for the duration and purposes of these terms and conditions. The Purchaser acknowledges and agrees that USP may transfer Personal Data outside of the country of collection. But, USP agrees that it will only transfer Personal Data to countries that have been identified as providing adequate protection for Personal Data or to a third party where USP has approved transfer mechanisms in place to protect the Personal Data.
- 11.4 USP shall (a) process the Personal Data only on the written instructions of the Purchaser unless USP is required by applicable data protection legislation; (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures; (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and (d) assist the Purchaser, at the Purchaser's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under applicable data protection legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; (e) notify the Purchaser without undue delay on becoming aware of a Personal Data breach that affects to USP; (f) at the written direction of the Purchaser, delete or return Personal Data and copies thereof to the Purchaser on termination of these terms and conditions unless required by applicable laws; and (g) maintain, complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the Purchaser or the Purchaser's designated auditor.

## 12 Force majeure

- 12.1 Neither party will be liable to the other for any failure or delay in performing its obligations under these terms and conditions which arises because of any circumstances which it cannot reasonably be expected to control (which shall include Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, or interruption or failure of the Internet or of any network, telecommunications, power supply or infrastructure, or any provider of any of the foregoing, but shall not include shortage or lack of available funds on the Purchaser's part), provided that it (a) notifies the other in writing as soon as reasonably practicable about the nature and extent of the circumstances and likely effects; (b) uses reasonable efforts to mitigate the effects of the circumstances so as to minimise or avoid any adverse impact on the other; and (c) uses reasonable efforts to resume performance as soon as reasonably practicable.
- 12.2 In the event of a force majeure event exceeding one (1) month, the Purchaser may immediately terminate these terms and conditions on written notice to USP without incurring any liability.

## 13 General

- 13.1 A waiver of any right under these terms and conditions is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 13.2 If any provision (or part of a provision) of these terms and conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 13.3 The Purchaser shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions. USP may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions.
- 13.4 Nothing in these terms and conditions is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 13.5 These terms and conditions do not confer any rights on any person or party under the Contracts (Rights of Third Parties) Act 1999.
- 13.6 Any notice required to be given under these terms and conditions shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery or sent by email to the address provided to it by the other party. A notice delivered by hand shall be deemed to have been received when delivered. A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of sending.
- 13.7 These terms and conditions and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these terms and conditions or its subject matter or formation (including non-contractual disputes or claims).

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