

Standard Terms and Conditions

These Terms and Conditions (May 2018) supersede all previous representations, understandings or agreements and shall prevail notwithstanding any variance with terms and conditions of any order submitted.

1 Acceptance

Each signed acceptance of an order or trial request will be deemed to be an offer by the Customer to purchase Services upon these Terms and Conditions.

1.1 Interpretation

In these Terms & Conditions, the following expressions will have the following meanings unless inconsistent with the context:

"Company"	LearningBook Ltd (registered number 08030490);
"Customer"	the person(s), school or company whose order for the Services is accepted by the Company;
"Services"	any Services which the Company provides to the Customer (including any of them or any part of them) under a Contract;
"Recurring Cost"	The amount invoiced for subscription services excluding training, hardware and equipment costs;
"Service Point"	the place at which the Services are to be performed as specified in the Company's acknowledgement of order;
"Terms and Conditions"	The standard terms and conditions of sale set out in this document together with any special terms agreed in writing between the Customer and the Company as specified on the front of the acknowledgement of order.
"Trialist"	The person(s), school or company using the Services on a 30 day trial basis

2 Charges

Charges for Services provided by the Company are as defined in the Customer Proposal. The Company reserves the right to change the rates for services with not less than thirty (90) days advance notification to the Customer.

- 2.1 Pricing The price for all services will be, unless otherwise agreed in writing, the price set out in the Company's published price list, current at the date of delivery. All price lists are exclusive of VAT and any other applicable sales tax or duty which will be added to the sum in question.
- 2.2 Price Guarantee the Company offers a second year "Price Guarantee". Prices are reviewed annually thereafter.
- 2.3 The Company reserves the right to invoice the Trialist for the cost of the SmartTablet if not returned in full working order (at your own expense) within 30 days of the start of the trial.

3 Payment

All payments to be made by the Customer under the Agreement will be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.

- 3.1 Payments - The Customer will pay annually in advance and receive an email invoice which is due on receipt. Accounts that remain unpaid thirty (30) days after the date of invoice may be assessed a service charge in the amount of one and one-half per cent (1.5%) per month of the total amount due.
- 3.2 Payment for Additional Products - The Company will invoice for additional products such as SmartTablets at time of order. Invoices are due before receipt.
- 3.3 Returns on Cheque, Credit Cards, Direct Debits - If the bank returns a cheque or fails to honour your credit card or electronic payment:
 - there will be a £45.00 insufficient funds charge;
 - you will be notified by e-mail that your cheque or your credit card was not accepted;
 - your service may be suspended until the balance and the service charges are received;

- the account will be immediately considered to be in default until full payment is received.

4 Default

Accounts unpaid ninety (90) days after the date of invoice will be considered in default. If the Customer in default maintains any information or files on its servers, the Company may, at its discretion, remove all such material from its servers. Removal of such material does not relieve the Customer of its obligation to pay any outstanding charges owing by the Customer. Customers with accounts in default agree to pay the Company reasonable expenses, including solicitor fees and costs for collection by third-party agencies, incurred in enforcing these Terms and Conditions.

5 Order Cancellation

The Company will use reasonable endeavours to deliver or perform (as appropriate) each of the Customer's orders for the Services within the time agreed when the Customer places an order and, if no time is agreed, then within a reasonable time, but the time of delivery or performance will not be of the essence. If, despite those endeavours, the Company is unable for any reason to fulfil any delivery or performance on the specified date, the Company will be deemed not to be in breach of the Contract, nor (for the avoidance of doubt) will the Company have any liability to the Customer for direct, indirect or consequential loss (all three of which terms includes, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery or performance except as set out in this condition. Any delay in delivery or performance will not entitle the Customer to cancel the order unless and until the Customer has given 30 days' written notice to the Company requiring the delivery or performance (as appropriate) to be made and the Company has not fulfilled the delivery or performance within that period. If the Customer cancels the order in accordance with this Condition then:

- 5.1** Refunds - the Company will refund to the Customer any sums which the Customer has paid to the Company in respect of that order or part of the order which has been cancelled; and
- 5.2** Customer Liability - the Customer will be under no liability to make any further payments in respect of that order or part of the order which has been cancelled.

6 Customer Services ("LearningBook Service")

The description of the Products and Services will be as set out in the Proposal. All samples, drawings, descriptive matter, specifications and advertising issued by the Company (or the manufacturer of Service supported goods) and any descriptions or illustrations contained in the Company's or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services represented by or described in them. They will not form part of the Agreement and this is not a sale by sample.

- 6.1** Minimum Service Term – Unless otherwise stated the term for each LearningBook Service ordered hereunder shall continue for twelve (12) calendar months from the Start of Service Date (the "Minimum Service Term").
- 6.2** Customer User Accounts - Will be assigned to each user to provide access to Services and data of the Customer. The use of the Customer User Account is subject to the conditions explained in the Company's Acceptable Usage Policy ("AUP").
- 6.3** Scheduled Maintenance - We will perform scheduled maintenance to servers from time to time. Wherever possible we will attempt to perform all scheduled maintenance at times which will minimise disruption to customers.
- 6.4** Unscheduled maintenance - May need to be performed. If unscheduled maintenance requires the LearningBook Service to be off-line for any length of time, we will email details of the outage/event to you after the maintenance has been completed.
- 6.5** Data Backup and Recovery - We will attempt to back up your data onto backup mechanisms on a daily basis for the purposes of disaster recovery. Data backups are retained for 30 days and then destroyed. In the event of equipment failure or data corruption, we will restore from the last known good backup.

- 6.6** Service Suspension - We may from time to time without notice suspend the Service or disconnect or deny your access to the Service: - (a) during any technical failure, modification or maintenance involved in the Service provided that we will use reasonable endeavours to procure the resumption of the Services as soon as reasonably practicable; or (b) If the Customer fails to comply with any agreement (including failure to pay charges due) until the breach (if capable of remedy) is remedied, or does, or allows to be done, anything which in our opinion may have the affect of jeopardising the operation of the Service. Notwithstanding any suspension of any Service under this clause you shall remain liable for all charges due throughout the period of suspension.
- 6.7** IP Addresses - If the Company assigns a Customer an IP address for use with the service plan, the right to use that IP address shall belong only to the Company and the Customer shall have no right to use that IP address except as permitted by the Company. The Company shall maintain and control ownership of all IP numbers and addresses that may be assigned to Customers and the Company reserves the right to change or remove all such IP addresses.
- 6.8** Customer Data - The content of the data stored anywhere on the Company's systems by the Customer is the sole responsibility of the Customer. All such data must comply with the Company's Acceptable Usage **Policy**.
- 6.9** Trialist Customer Data – Any data captured during the trial period will no longer be accessible after the end of the trial period.
- 6.10** Customer's Right to Possession of Data - The Customer owns without exclusivity all data created and/or modified by employees and authorised agents of the Customer which is stored on the Company's systems. Access to this data may be denied if the account is in Default (see 4).
- 6.11** Intellectual Property Ownership - All Customer Data (files and database content) is the Intellectual Property of the Customer, unless stated otherwise in writing and signed by both parties.

7 Termination

On completion of the Minimum Service Term (see 6.1) either party may terminate this Agreement by giving thirty **(30)** days written notice to the other party. Email or telephone requests for termination of services will not be honoured.

- 7.1** Breach of Contract - The Company may by written notice terminate the Agreement immediately if the Customer is in material breach of the Agreement or enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect.
- 7.2** The termination of the Agreement howsoever arising is without prejudice to the rights, duties and liability of either the Customer or the Company accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.

8 Liability of Company

The Company warrants that it will perform the Services with all reasonable care and skill. The Company does not exclude its liability (if any) to the Customer:

- 8.1** for breach of the Company's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982;
- 8.2** for personal injury or death resulting from the Company's negligence;
- 8.3** under section 2(3) Consumer Protection Act 1987;
- 8.4** for any matter which it would be illegal for the Company to exclude (or to attempt to exclude) its liability; or
- 8.5** for fraud or fraudulent misrepresentation.

The Company's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the Recurring Cost paid by the Customer under the Agreement during the twelve (12) months before the cause of action arose.

9 Legal Restrictions

The Company services may be used for lawful purposes only. Submission, transmission, or maintenance of any information or materials in violation of any UK laws, acts or regulations is prohibited. This includes, but is not limited to, material legally judged to be threatening or obscene.

The Customer must:

- 9.1 respect the legal protection afforded by copyright, trademarks, licence rights and other laws to materials accessible via the Company service;
- 9.2 respect the privacy of others;
- 9.3 use the service in a manner that does not interfere with or disrupt other network users, services or equipment; and
- 9.4 refrain from acts that waste resources or prevent other users from receiving the full benefit of the Company services. The Company reserves the right to refuse Service to the Customer without providing reason or cause.

10 Indemnity

The Customer agrees to indemnify and hold harmless the Company from any and all claims resulting from:

- 10.1 the Customer's use of the Company's Services which cause damage or loss to the Customer or a third party; and
- 10.2 a third party illegally obtaining access to the site and causing damage or loss.

11 Disclaimer

- 11.1 The Company makes no warranties of any kind, whether express or implied, for the Services it provides. The Company also disclaims any warranty of merchantability or fitness for a particular purpose. The Company will not be responsible for any direct, indirect or consequential damages which may result from the use of its Services including loss of data or profit resulting from delays, non-delivery or interruption in Service.

12 General

- 12.1 Time for performance of all obligations of the Customer is of the essence. Time for performance of all obligations of the Company is not of the essence.
- 12.2 Each right or remedy of the Company under the Agreement is without prejudice to any other right or remedy of the Company whether under the Agreement or not.
- 12.3 If any condition or part of the Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Agreement and will be ineffective, without, as far as is possible, modifying any other provision or part of the Agreement and this will not affect any other provisions of the Agreement which will remain in full force and effect.
- 12.4 No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.
- 12.5 Save as set out in the Contract, these Terms and Conditions may only be varied or amended in writing and signed by a director of the Company.
- 12.6 The Company may assign, delegate, license, and hold on trust or sub-agreement all or any part of its rights or obligations under the Agreement.
- 12.7 The Agreement is personal to the Customer who may not assign, delegate, license, and hold on trust or sub-agreement all or any of its rights or obligations under the Agreement without the Company's prior written consent.

- 12.8** The Agreement contains all the terms which the Company and the Customer have agreed in relation to the Goods and/or Services (as appropriate) and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Goods and/or Services. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Agreement. Nothing in this Condition will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 12.9** The parties to the Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.
- 12.10** Any notice in connection with the Agreement will be in writing addressed to the other party at its registered office, or principal place of business and will be delivered by hand, or first class or special delivery post. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address for service or if made by pre-paid, first class post or special delivery post, 48 hours after being posted.
- 12.11** The formation, existence, construction, performance, validity and all aspects whatsoever of the Agreement or of any term of the Agreement will be governed by English law. The English courts will have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with the Agreement. The parties agree to submit to that jurisdiction.

13 Returns Policy

All our goods are sold to you with the benefit of the manufacturer's warranty. We will accept returns of faulty goods notified to us within 14 days of delivery and our liability will be limited to the repair or replacement of the goods or the re-performance of any defective services, subject to the terms of the manufacturer's warranty. After 14 days you will need to deal with the manufacturer directly. As a business customer you are not entitled to return goods due to a change of mind.

14 LearningBook Products

- 14.1** In consideration of the Company agreeing to make LearningBook products available to the Customer's parents/guardians and the indemnity in clause 14.3 below, the Customer agrees to use reasonable endeavours to promote the Company's products to the Customer's parents/guardians and support the product ordering process, including by:
- making the samples the Company provides available to the Customer's parents/guardians for inspection at reasonable times;
 - promptly notifying the Company of any queries relating to products and/or orders of products;
 - facilitating any requests from the Customer's parents/guardians to edit or otherwise amend the content of their child/children's LearningBook;
 - supporting the returns process in the event that any products are faulty and a parent/guardian wishes to return them to the Company via the Customer.
- 14.2** The Customer agrees and acknowledges that, in accordance with its existing data protection policies, the Customer is responsible for ensuring that appropriate consents from parents and guardians of children in the Customer's care are in place to cover the content of each child's LearningBook and to indemnify the Company to the extent that any claims brought against the Company or, where applicable, the Company's third party service providers, are attributable to an absence of such consent.
- 14.3** Subject to clause 14.2, the Company agrees to indemnify the Customer against any claims from the Customer's parents/guardians or any third party arising from the sale of LearningBook products.