

Online terms and conditions for purchase of a Learning Nexus online training course

AGREED TERMS

Your attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

1. About us

1.1 **Our details.** North Yorkshire County Council of County Hall, Northallerton, North Yorkshire, DL7 AD O. We operate the website <http://nyestraining.co.uk/>.

1.2 **Contacting us.** To contact us telephone our customer service team at 01609 798010 or e-mail trainingandlearning@northyorks.gov.uk. How to give us formal notice of any matter under the Contract is set out in clause 16.

2. Our contract with you

2.1 **Our contract.** These terms and conditions (**Terms**) apply to the order by you and supply of Services by us to you (**Contract**). They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 **Entire agreement.** The Contract is the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.

2.3 **Language.** These Terms and the Contract are made only in the English language.

3. Placing an order and its acceptance

3.1 **Placing your order.** Please follow the onscreen prompts to place an order. You may only submit an order using the method set out on the site. Each order is an offer by you to buy the services specified in the order (**Services**) subject to these Terms.

3.2 **Acknowledging receipt of your order.** After you place your order, you will receive an email from us within 2 working days acknowledging that we have received it, but please note that this does not mean that your order has been accepted. Our acceptance of your order will take place as described in clause 3.3.

3.3 **Accepting your order.** Our acceptance of your order takes place when we send an (**Order Form**) to you via email confirming your order including a quote. You are required to sign and return the order form to us as confirmation of your acceptance of the quote provided (**Order Confirmation**) at which point and on which date (**Commencement Date**) the Contract between you and us will come into existence. The Contract will relate only to those Services confirmed in the Order Confirmation.

3.4 **If we cannot accept your order.** If we are unable to supply you with the Services for any reason, we will inform you of this by email and we will not process your order. If you have already paid for the Services, we will refund you the full amount.

4. **Cancelling your order and obtaining a refund**

- 4.1 Where we have sent you the **(Order Form)** and this has been signed and returned **(Order Confirmation)** you may only cancel the Contract if you have not received confirmation of your login details via email.
- 4.2 If you have returned the **(Order Form)** to us and have not received confirmation of your login details you may cancel your order and obtain a refund. Please note there will be an administration charge of £25.
- 4.3 If you have accessed all or part of the online course then you do not have the right to cancel the Contract.
- 4.4 If you cancel the Contract prior to receiving your login details we will refund you less the £25 administration charge for the price you paid for the Services, by the method you used for payment.

5. **Our services**

- 5.1 **Descriptions and illustrations.** Any descriptions or illustrations on our site are published for the sole purpose of giving an approximate idea of the services described in them. They will not form part of the Contract or have any contractual force.
- 5.2 **Compliance with specification.** Subject to our right to amend the specification (see clause 5.3) we will supply the Services to you in accordance with the specification for the Services appearing on our website at the date of your order in all material respects.
- 5.3 **Changes to specification.** We reserve the right to amend the specification of the Services if required by any applicable statutory or regulatory requirement or if the amendment will not materially affect the nature or quality of the Services.
- 5.4 **Reasonable care and skill.** We warrant to you that the Services will be provided using reasonable care and skill.
- 5.5 **Time for performance.** We will use all reasonable endeavours to meet any performance dates specified in the Order Confirmation, but any such dates are estimates only and failure to perform the Services by such dates will not give you the right to terminate the Contract.

6. **Your obligations**

- 6.1 It is your responsibility to ensure that:
- (a) the terms of your order are complete and accurate;
 - (b) you co-operate with us in all matters relating to the Services;
 - (c) you provide us with such information and materials we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (d) you comply with all applicable laws, including health and safety laws;
 - (e) you keep all of our materials, equipment, documents and other property **(Our Materials)** at your premises in safe custody at your own risk, maintain Our Materials in good condition

until returned to us, and not dispose of or use Our Materials other than in accordance with our written instructions or authorisation;

6.2 If our ability to perform the Services is prevented or delayed by any failure by you to fulfil any obligation listed in clause 6.1 (**Your Default**):

- (a) we will be entitled to suspend performance of the Services until you remedy Your Default, and to rely on Your Default to relieve us from the performance of the Services, in each case to the extent Your Default prevents or delays performance of the Services. In certain circumstances Your Default may entitle us to terminate the contract under clause 14 (Termination);
- (b) we will not be responsible for any costs or losses you sustain or incur arising directly or indirectly from your failure or delay to perform the Services; and
- (c) it will be your responsibility to reimburse us on written demand for any costs or losses we sustain or incur arising directly or indirectly from Your Default.

7. Charges

7.1 In consideration of us providing the Services you must pay our charges (**Charges**) in accordance with this clause 7.

7.2 The Charges are the prices quoted on our site at the time you submit your order. If you wish to change the scope of the Services after we accept your order, and we agree to such change, we will modify the Charges accordingly.

7.3 We take all reasonable care to ensure that the prices stated for the Services are correct at the time when the relevant information was entered into the system.

7.4 Our Charges are exclusive of VAT. Where VAT is payable in respect of some or all of the Services you must pay us such additional amounts in respect of VAT, at the applicable rate, at the same time as you pay the Charges.

8. How to pay

8.1 Payment for the Services is in advance. We will take your payment upon acceptance of your order. An invoice will be raised for non-maintained school customers and via journal entry for maintained school customers.

8.2 We will send you an electronic invoice within seven days of the beginning of the month following payment.

8.3 If you fail to make a payment under the Contract by the due date, then, without limiting our remedies under clause 14 (Termination), you will have to pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.3 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

8.4 All amounts due under the Contract must be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Intellectual property rights

- 9.1 All intellectual property rights in or arising out of or in connection with the Services will be owned by us or by our licensors.
- 9.2 In consideration of your payment of our Charges we grant you a limited, non –exclusive and non-transferable right to use the course materials and associated software.
- 9.3 You may not copy, record or relay in any way the course materials or software except for your own use in completing the online course.
- 9.4 You must not sub-licence, assign or otherwise transfer the rights granted to you in clause 9.2.

10. How we may use your personal information

- 10.1 We will use any personal information you provide to us to provide the Services and process your payment for the Services.
- 10.2 We acknowledge that we are the sole Data Controller in relation to the provision of the Services and that you are not a data controller or data processor in relation to the provision of the Services. We shall comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, our obligations under the Data Protection Legislation. We shall bear our own costs in relation to compliance with this clause 10 and the Data Protection Legislation.
- 10.3 We shall ensure that:
- (i) all Personal Data is kept confidential;
 - (ii) only allow our employees access to the Personal Data where such access is necessary to enable us to comply with our obligations under this Agreement;
 - (iii) we shall, in performing its obligations under this Agreement, comply in all respects with the Data Protection Legislation; and
 - (iv) we have appropriate security measures in place to safeguard against any unauthorised access or unlawful processing or accidental loss, destruction or damage of the Personal Data.
- 10.4 For the purposes of this Clause 10 the following definitions shall apply:

Data Protection Legislation: means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of Personal Data and privacy; and (iii) all applicable Law about the processing of Personal Data and privacy;

DPA 2018: means the Data Protection Act 2018;

GDPR: means the General Data Protection Regulation (*Regulation (EU) 2016/679*);

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

LED: means the Law Enforcement Directive (*Directive (EU) 2016/680*);

Personal Data: has the meaning given in the GDPR.

11. Limitation of liability: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 11.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.2 Subject to clause 11.1, we will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) any indirect or consequential loss.
- 11.3 Subject to clause 11.1, our total liability to you arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to the total Charges paid under the Contract.
- 11.4 We have given commitments as to compliance of the Services with the relevant specification in clause 5.2. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5 Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 11.6 This clause 11 will survive termination of the Contract.

12. Confidentiality

- 12.1 We each undertake that we will not disclose to any person any confidential information concerning one another's business, affairs, customers, clients or suppliers, except as permitted by clause 12.2.
- 12.2 We each may disclose the other's confidential information:
- (a) to such of our respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out our respective obligations under the Contract. We will each ensure that such employees, officers, representatives, subcontractors or advisers comply with this clause 12; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations under the Contract.

13. Termination

- 13.1 Without limiting any of our other rights, we may suspend the performance of the Services, or terminate the Contract with immediate effect by giving written notice to you if:
- (a) you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within seven days of you being notified in writing to do so;
 - (b) you fail to pay any amount due under the Contract on the due date for payment;
 - (c) you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (d) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
 - (e) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.
- 13.2 Termination of the Contract will not affect your or our rights and remedies that have accrued as at termination.
- 13.3 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.

14. Events outside our control

- 14.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond our reasonable control (**Event Outside Our Control**).

- 14.2 If an Event Outside Our Control takes place that affects the performance of our obligations under the Contract:
- (a) we will contact you as soon as reasonably possible to notify you; and
 - (b) our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. We will arrange a new date for performance of the Services with you after the Event Outside Our Control is over.
- 14.3 You may cancel the Contract affected by an Event Outside Our Control which has continued for more than 14 days. To cancel please contact us. If you opt to cancel we will refund the price you have paid, less the charges reasonably and actually incurred us by in performing the Services up to the date of the occurrence of the Event Outside Our Control.

15. Communications between us

- 15.1 When we refer to "in writing" in these Terms, this includes email.
- 15.2 Any notice given by one of us to the other under or in connection with the Contract must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.
- 15.3 A notice is deemed to have been received:
- (a) if delivered personally, on signature of a delivery receipt;
 - (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
 - (c) if sent by email, at 9.00 am the next working day after transmission.
- 15.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.
- 15.5 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

16. General

- 16.1 **Assignment and transfer.**
- (a) We may assign or transfer our rights and obligations under the Contract to another entity.
 - (b) You may not assign or transfer your rights or your obligations under the Contract to another person.
- 16.2 **Variation.** Any variation of the Contract only has effect if it is in writing and signed by you and us (or our respective authorised representatives).
- 16.3 **Waiver.** If we do not insist that you perform any of your obligations under the Contract, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you or that you do not have to comply with those obligations. If we do waive any

rights, we will only do so in writing, and that will not mean that we will automatically waive any right related to any later default by you.

- 16.4 **Severance.** Each paragraph of these Terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- 16.5 **Third party rights.** The Contract is between you and us. No other person has any rights to enforce any of its terms.
- 16.6 **Governing law and jurisdiction.** The Contract is governed by English law and we each irrevocably agree to submit all disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English courts.