

General Terms and Conditions - Learnforce

Article 1: Definitions and Interpretation

1. Customer: The customer defined in the Order Confirmation who has an Agreement with the Contractor.
2. Contractor: Learnforce B.V., the party delivering the Services.
3. Agreement: The binding agreement between the Customer and Contractor, consisting of the Order Confirmation and all accompanying documents, including, but not limited to, the General Terms and Conditions, specific Project Conditions, and any later written amendments or additions.
4. Order Confirmation: The Quote or budget approved by the Customer. Digital confirmations are considered valid.
5. Effective Date: The date on which the Agreement legally becomes effective, as established in the Order Confirmation.
6. Appendix: Any additional document formally added to the Agreement, either at initial signing or through later amendments, and serves to specify, supplement, or modify the terms of the Agreement.
7. Data Processing Terms: Document with terms regarding the roles of Processor and Controller under the GDPR.
8. Business Day: A calendar day, excluding weekends and recognized public holidays in the Netherlands.
9. Online Platform: SAAS application where Users have access to (online) learning and development tools.
10. Administrator: A User of the Online Platform specifically authorized to access and manage the control environment of the Platform, including, but not limited to, creating and modifying user accounts, setting access rights, and managing content.
11. User: A person registered on the Online Platform, as described in the License Terms.

Article 2: Scope of Agreement, Amendments, and Application

1. Changes or additions to the Agreement or deviations from the Terms are only binding if agreed in writing and included in a separate appendix to the Order Confirmation or subsequent Order. Digital confirmations are considered valid for this purpose.
2. In case of discrepancies between the Dutch text of the Terms and translations, the Dutch text prevails.
3. Not immediately enforcing any provision within a specified period does not exclude the right to demand compliance later unless explicitly and in writing waived.

Article 3: Delivery of Services, Assessment, and Acceptance

1. The Contractor guarantees that the Services meet the requirements described in the Agreement and are performed professionally.
2. The Customer assesses the results of the Service within 30 days after delivery. Acceptance is confirmed by notifying the Contractor. In case of non-acceptance, the Customer must inform the Contractor in writing and in detail about the reasons.
3. If necessary materials or information are not provided by the Customer in a timely manner, the agreed deadlines and delivery times can be adjusted accordingly. This may also lead to additional costs.
4. The Customer may engage a third party at their own expense for the assessment of the Service.
5. If no response from the Customer is received within 30 days after delivery, the Services are deemed to have been accepted.
6. Disputes about the quality or adequacy of the Service will be attempted to be settled amicably. If this is not possible within 30 days, mediation by a third party can be sought.
7. The sign-off process for the delivered Services requires explicit approval from the Customer for (partial) deliveries. This approval must be confirmed in writing and is binding for the progress and billing of the Services. All work performed after the sign-off is considered additional work and is subject to the rates and conditions set out in Article 7.

Article 4: Working Conditions and Locations

1. Work related to the Services is performed at the locations specified in the Order Confirmation or subsequent Order.
2. If no location is specified, it is initially assumed to be an office location of the Contractor.
3. Both parties grant each other and their Personnel access to these locations and provide usual working conditions during regular office hours.
4. All Personnel must adhere to the house rules of the work location and comply with relevant safety procedures.
5. The Contractor complies with the laws and regulations applicable to working conditions and the applicable employment contract for its employees.

Article 5: Personnel, Replacement, and Subcontracting

1. The Contractor may temporarily or permanently replace personnel involved in delivering the Services, subject to mutual agreement on any rate changes.
2. If the Customer requests the replacement of personnel for a better execution of the Agreement, the Contractor will comply, ensuring that replacements have comparable expertise and experience.
3. The Contractor may use services of third parties for fulfilling the Agreement as agreed in the Data Processing Terms.
4. For any subcontracting not specified in the Data Processing Terms, written agreement of both parties is required.

Article 6: Confidentiality, Data Protection, and Security

1. All information obtained during the execution of the Agreement, which is labeled as confidential or whose confidentiality can be expected, is confidential, except when legally required to disclose.
2. Both parties, including their personnel, must comply with the confidentiality obligations.
3. The Contractor may not disclose results of the Services to third parties without explicit permission from the Customer, subject to conditions imposed by the Customer.
4. Upon termination of the Agreement, the Contractor retains data necessary to comply with legal obligations and deletes or returns other data to the Customer.
5. The Contractor ensures that data processing complies with GDPR, with appropriate technical and organizational measures.

Article 7: Rates, Invoicing, and Payment

1. Rates are based on actual costs and hours unless a fixed price, project budget, or license fee has been agreed. Additional work requested by the Customer is subject to extra rates.
2. The Contractor does not begin additional work without written authorization from the Customer. Digital confirmations are considered valid for this purpose. All conditions of the original Agreement apply to additional work.
3. Invoices are sent electronically and contain all details specified by the Customer, including the project phase for which the invoice is issued or categorised services, hours, and any additional costs.
4. Payment is due within 30 days of receipt of the invoice. Late payments incur the legal interest rate set by the Dutch government and reimbursement of costs under Dutch law.
5. For obtaining and using Learnforce Credits, which entitle services at a reduced rate, a validity period of 12 months from the date of purchase applies. If the Credits are not used within this period, they will expire without the right to refund or transfer.
6. For project amounts prepaid but not included in a project within 12 months from the date of payment, the right to these services expires. Refund or transfer of the amount after this term is not possible, unless otherwise agreed in writing.
7. For the procurement of services or products by Learnforce, invoices must contain a specific reference from Learnforce. Invoices without this reference will not be processed.
8. If the Customer disputes an invoice or the adequacy of a service, the Contractor reserves the right to suspend services until a solution is found.

Article 8: Intellectual Property Rights

1. The copyright of Services specifically developed for the Customer by the Contractor is transferred to the Customer upon acceptance and full payment of the final invoice, including all rights to such custom work.
2. For existing intellectual property of the Contractor, including software used in the Services, specific conditions apply. In these cases, the Contractor grants the Customer a non-exclusive and revocable right of use.
3. For media expressions with actors used for external purposes, an additional agreement is required. This agreement contains specific provisions on the duration of use, copyright, portrait rights, buy-out arrangements, and compensations.
4. All database rights arising from the Contractor's work become the property of the Customer, and these rights transfer immediately upon creation.
5. For the source files created by the Contractor as part of the Services, it is stipulated that these are not automatically transferred to the Customer. However, if the Customer wishes these source files to be transferred, this can be done against a fee amounting to 20% of the total project price. This arrangement must be agreed separately and documented in writing.
6. The Customer takes responsibility for indemnifying the Contractor against claims from third parties regarding possible infringements of intellectual property rights. The Customer is responsible for taking preventive measures and limiting any related costs and damage.

Article 9: Liability, Insurance, and Damage

1. The Contractor is liable for damage resulting from their services, limited to the value of the order.
2. Limitations of liability do not apply in cases of death, injury, intent, gross negligence, infringement of intellectual property rights, or non-compliance with GDPR.
3. The Contractor is liable for damage to the Customer's property used during service provision, subject to standard liability limitations.
4. The Contractor maintains adequate insurance for professional, business, property, and cybersecurity liability and provides proof of this upon request from the Customer.
5. The Contractor indemnifies the Customer against liabilities related to the Contractor's personnel, including tax and social security obligations.

Article 10: Cancellation, Termination, and Non-Performance

1. Either party may extrajudicially cancel the Agreement, in whole or in part, due to non-performance or impossibility of performance, subject to a reasonable notice period, unless the failure is of such an exceptional nature or minor significance that it does not justify annulment.
2. In circumstances where one of the Parties cannot fulfill its obligations under the Agreement due to something beyond its control, the other Party has the right to extrajudicially dissolve the Agreement in whole or in part by registered mail, subject to a reasonable period, without the right to compensation, but not earlier than 30 Business Days from the date the circumstance occurred.
3. Immediate cancellation is permitted if the Contractor goes bankrupt, liquidates its business, ceases operations, is seized, or undergoes similar significant changes in business status.
4. Both parties can cancel the Agreement at any time, in accordance with the agreed notice period, with financial settlement based on completed work, incurred costs, and costs based on future obligations for performing the task already undertaken. Herein, the Customer indemnifies the Contractor for consequences of the termination of the Agreement.

Article 11: Miscellaneous Provisions

1. If provisions of the Agreement are declared invalid or void, the remaining provisions remain effective. Parties will consult to replace invalid or void provisions with alternatives that align with the original intention.
2. Provisions intended to remain in force after termination of the Agreement, including those concerning confidentiality, intellectual property, and dispute resolution, continue to apply.

Article 12: Applicable Law and Dispute Resolution

1. Disputes arising from the Agreement fall under the exclusive jurisdiction of the competent court in Utrecht, the Netherlands, unless otherwise agreed by the parties.
2. The Agreement and any related disputes or claims are governed and interpreted in accordance with Dutch law.

