

# Terms and Conditions of Supply of Goods from Attainment in Education Ltd (Updated December 2012)

These Conditions set out the terms on which Attainment in Education Ltd of 32 Crescent Road, Birkby, Huddersfield, HD2 2TF ("We" and similar terms) have agreed to supply Goods to a customer ("You" and similar terms).

## 1 DEFINITIONS

The following terms used elsewhere in these Conditions are defined as follows:

- "Goods" means any books, publications, software, CDs or similar education related products (including electronic items, such as PDFs);
- "Intellectual Property Rights" means any patent, copyright, design right, trade mark, confidential information, know how and all similar rights whether or not registered or capable of registration, relating to the Goods;
- "Price" means the price agreed in writing; or if not agreed: as stated on our website, or most recent marketing literature sent to you, whichever is the higher (together with VAT and any other applicable taxes or duties).
- "Specification" means the specification, syllabus or course outline that a teacher is following that may or may not involve coursework or examination.

## 2 OTHER CONDITIONS

We agree to supply the Goods on the terms of these Conditions as stated herein only. We will not be bound by any other conditions contained or referred to in your order form or other documents or correspondence. We will not agree to any alteration of these Conditions unless We accept the alterations in writing.

## 3 OUR OBLIGATIONS

3.1 We will use all reasonable endeavours to provide the Goods within any timescale indicated to you subject to the following:

- a. We endeavour to publish Goods within a reasonable timescale
- b. At times it may not be possible to deliver the Goods at all given the nature of Our business (without limiting the generality of the foregoing, for example: an author could fail to deliver a title, or deliver one which is not appropriate) – in this case We shall have no liability to you.
- c. Once Goods have been published, we will endeavour to dispatch the Goods within 5 business days of receipt of order.
- d. Where feasible, goods will be dispatched in electronic form using e-mail.
- e. Any timescale given is only an estimate and accordingly We can accept no responsibility or liability, financial or otherwise in the event that We are unable to keep to the timescale.

3.2 Unless a quotation provides otherwise, no descriptive material or specification whether written or oral contained in any correspondence or statement or in promotional or sales literature shall form any part of an agreement between Us and You.

3.3 We may suspend or cease delivery of Goods at our discretion if at any time You are in breach of Your obligations under these Conditions or We have reason to believe that You may not be able to pay Your debts as they fall due or there is any change in Your ownership or control which for whatever reason We consider makes it unsuitable or undesirable for Us to continue to supply You and in any such case We shall have no further liability or obligation to You.

3.4 All publications are designed to supplement teaching only. We try to ensure that the information provided in our publications is accurate and up-to-date at the time of publication. We do not warrant: that any of the Goods are suitable for any particular purpose (e.g. any particular qualification), or the results that may be obtained from the use of any publication, or expected exam grades, or that we are affiliated with any educational institution, or that any publication is authorised by, associated with, sponsored by or endorsed by any educational institution unless specified. Practice questions may be designed to follow the content of a specification and may also attempt to prepare students for the type of questions they will meet in the examination, but will not attempt to predict future examination questions. Further, coursework, project, controlled assessment and pre-release publications are intended to be a supplement to teaching and not a replacement.

## 4 PRICE AND PAYMENT TERMS

4.1 Pre-payment is required unless we agree to accept payment after receipt of goods, which will be at Our discretion. Where We have used our discretion to accept payment after receipt of goods, You are to pay the Price in the manner and at the time We agree with You in writing; or if We have not so agreed, in full not later than twenty-eight (28) days after delivery of the Goods to You, whichever is the earliest.

4.2 If payment is not made by the due date We may charge interest on the amount outstanding at the rate of 4% above the Bank of England base rate p.a. until payment is made.

4.3 For resources that are dispatched by post, the postage and packing charge to customers in the UK will normally be £5. We reserve the right to vary this depending upon the requirements of individual resources. Any such variations will be advised by Us prior to acceptance of Your order.

4.4 We will not accept any penalties or liability for late delivery where third party couriers or the postal service are used.

4.5 We are not obliged to deliver Goods to You if You have not paid the sum agreed, including postage and packing where appropriate.

## 5 YOUR OBLIGATIONS

The following Conditions are Your responsibility entirely and We shall not accept liability for Your failure to fulfil such obligations:

- 5.1 All materials contained within the Goods are to be used appropriately at Your own discretion.
- 5.2 It is Your responsibility to assess the suitability and to decide which pages, if any, to provide, verbally, or hand out to students and which parts to use as background information for Yourself.
- 5.3 You acknowledge that you rely on Your own skill and judgement in determining the suitability of:
  - a) The Goods for any particular purpose
  - b) The level of information & support provided in relation to the constraints of the specification and to others involved in moderation of the delivery of the course
- 5.4 You acknowledge that You need to adapt, adjust, extend and/or censor any parts of the material and/or information contained within the Goods, as appropriate, to suit Your needs, the needs of the specification and the needs of the individual or group concerned. For example, if any of the contained material may overly direct the student in an assessed article of work, the teacher should remove or adapt this material to avoid this.
- 5.5 You acknowledge that you will refer to the exam-board(s) for expert advice where appropriate regarding the suitability of the Goods.
- 5.6 You and/or Your students may not use any material or content provided within the Goods without referencing/acknowledging the source of the material.

## 6 INTELLECTUAL PROPERTY RIGHTS

- a. You are licensed to use the Goods ONLY at a single institution with a single address.
- b. You are licensed to use the Goods ONLY with students who are officially enrolled with the institution (at the agreed address as per condition 6.1 a.). Further, these enrolled students must regularly attend the institution (at the agreed address as per condition 6.1 a.) in person. You will permit us to audit the institution to which this licence relates to ensure

compliance with the whole of this condition 6.

- c. Any access to the Goods, or part of them, via an intranet or similar must be via a suitable password protected system. As far as reasonably practicable, it should be made impossible for parties other than enrolled students or members of staff to access the Goods.
- d. If You do not pay for the Goods when payment is due, the licence will be suspended until payment. The licence will also terminate should you breach any of the terms of this agreement. If the licence terminates or you return the Goods to us, you will destroy any copies or printouts made, including any given to students.

6.2 The Intellectual Property Rights relating to the Goods shall not transfer to You. You may not grant any sub-licence or transfer the benefit of any licence granted relating to the Goods. In addition, Goods (or items forming part of the Goods) are not to be resold in any format whatsoever, unless We agree this explicitly in writing.

## 7 RETURNS & CANCELLATIONS

7.1 Orders can only be cancelled if we confirm Goods have not yet been dispatched.

7.2 We operate a no returns policy due to the nature of the Goods. However, We will accept returns of Goods provided in a hard copy form at Our discretion on the following occasions:

- a. If the Goods have been damaged in transit or are technically faulty, after the damaged Goods have been returned and received by Us, We will send a replacement.
- b. If We agree with You that the Goods have substantial quality issues and that You notify us of the reasons and details within a reasonable timescale

7.3 Requests to return Goods provided in a hard copy form must be made no longer than ten (10) calendar days after the day on which you receive the Goods. We recommend that You obtain proof of postage, as We shall not be held responsible for Goods lost in transit.

7.4 Some products include tamperproof labels which notify you not to remove the label unless you agree to the purchase. Agreed returns are nullified if you remove this label.

7.5 All postage and packing charges, as stated on the invoice, are not refundable. The return cost is always the responsibility of the customer.

## 8 RETENTION OF TITLE AND RISK

8.1 Where Goods are to be supplied to You they will remain Our property until You have discharged all Your obligations pursuant to all contracts between Us & You and all other debts owed to Us by you.

8.2 Whilst the Goods remain in Our ownership You may not permit any third party interest to be created over them and You shall take proper care of the Goods.

8.3 The Goods shall be at Your risk from the time they leave Our premises and whether or not delivered to you or to any agent on your behalf.

## 9 LIABILITIES

9.1 We offer no warranties against errors, omissions or misleading statements contained in the material within the Goods.

9.2 We do not accept any responsibility for the information found following website links contained within Our Goods, nor do we guarantee, represent or warrant that the content contained in the sites is accurate, legal and non-offensive, nor should a website address or the inclusion of a hyperlink be taken to mean endorsement by us of the site to which it points.

9.3 In so far as We are able to do so and at your expense We will assign to You the benefit of any warranties and conditions relating to the Goods contained in any contract which We may have with any third party for the supply of the Goods.

9.4 We do not accept liability in any circumstances and whether in contract, tort or on any other basis whatsoever and however caused for:

- a. Any economic losses (including without limitation loss of revenues, profits, contracts, business or anticipated savings), or any loss of goodwill or reputation; or
- b. Any special, indirect or consequential damage of any nature whatsoever.

9.5 Our total liability to You whether in contract, tort (including negligence or breach of statutory duty), breach of third party rights, or otherwise howsoever arising, shall not in any event exceed the level of insurance that We have in relation to our business at any particular time, or in relation to any particular event, whichever is the lower.

## 10 INDEMNITY

10.1 We require You to indemnify Us from and against all claims, actions, demands, proceedings, damages, costs, charges and expenses arising out of or in connection with the supply of the Goods to You and/or Your use of them in teaching and related activities:

- a. To the extent that any such claim etc shall exceed the limit of liability specified in condition 9.5 above;
- b. Where any such claim or loss arises as a result of any breach on Your part of any of Your obligations under these Conditions (in particular those matters contained in condition 5);
- c. In any event where such claims or actions are brought or threatened against Us by a third party as a result of Your use of the Goods.

10.2 We shall not be liable for any loss or damage arising from any occurrence unless a claim is formally notified in writing before the expiry of two years from the date of order.

## 11 FORCE MAJEURE

We will not accept responsibility for any delay in or failure to supply the Goods which is caused by factors beyond our control which shall include but not be limited to acts of God, acts of governmental or any other lawful authority, strike, civil commotion, flood, fire, explosion, epidemic, trade embargo, failure of utilities or equipment or any other acts or omissions on the part of any third party.

## 12 ASSIGNMENT AND AGREEMENT

12.1 You may not assign an agreement subject to these Conditions in whole or in part without our prior written consent; though We may assign the same without Your consent. You, our assignees, our successors and we are the only persons who shall have any rights pursuant to such agreements.

12.2 These Conditions set out the entire agreement and understanding of both of us relating to the subject matter thereof and supersede all prior discussions between Us and all prior memoranda of intent or understanding and all previous documentation.

## 13 GENERAL

13.1 If either of Us shall positively waive or delay or not insist in any instance on full compliance by the other with any of these Conditions, this shall not prevent him from subsequently requiring such compliance in respect of that instance by the other party (always subject to reasonable notice in the case of a positive waiver).

13.2 The construction, validity and performance of an agreement subject to these Conditions shall be governed in all respects by English law and We agree to submit to the non-exclusive jurisdiction of the English courts.

13.3 You are to keep confidential and shall not disclose the terms of an Agreement subject to these Conditions in whole or in part. These obligations continue after termination of an Agreement subject to these Conditions however caused.