

## Terms and Conditions

By using any materials produced by STAT Sheffield School Tracking and Assessment Tools and (where relevant) ordering any Available Supplies, the Customer agrees with the School that these Terms and Conditions (and no others) apply to such use and (where relevant) to the ordering and supply of such. Any replacement terms and conditions suggested by the Customer in the course of ordering, receiving or paying for Available Supplies shall not be accepted.

| 1. Parties                                      |  |  |
|---|--|--|
| 1.1   | The School   | <b>Malin Bridge Primary School</b> of Dykes Lane, Sheffield S6 4RH, as proprietor of this Website and supplier of the Available Supplies.  |
| 1.2   | The Customer   | <p>As the context requires:</p> <ul style="list-style-type: none"> <li>• The individual using this Website and (if relevant) purchasing Available Supplies in his/her own right.</li> <li>• <b>If the Available Supplies are being purchased by an organisation (e.g. a school, company etc.):</b> that organisation.</li> </ul>   |
| 2. How orders for Available Supplies are filled |  |  |
| 2.1   | How orders are filled  | <ul style="list-style-type: none"> <li>• The School does not collect payment directly from the Website.</li> <li>• A person wishing to purchase Available Supplies must make his/her (and if the purchaser is to be made on behalf of his/her organisation, that organisation's) contact details available according to instructions on the Website.</li> <li>• If the School wishes to supply the relevant Available Supplies, it shall contact the person (or his/her organisation, where relevant) by e-mail or telephone to arrange payment and delivery details. This is to check the genuineness of the relevant order, for the protection of both the School and that person and (if relevant) his/her organisation.</li> </ul> |
| 2.2   | Amounts payable by the Customer for the Available Supplies ordered   | <ul style="list-style-type: none"> <li>• As indicated on the Website at the time.</li> <li>• Such amounts shall <b>exclude</b> VAT and are in sterling unless otherwise clearly indicated.</li> <li>• Such amounts are exclusive of any amounts that may be deducted at source (e.g. bank charges).</li> </ul>   |
| 2.3   | When a legal contract is in place regarding the supply of Available Supplies ordered by or on behalf of the Customer | Only when the arrangements described above are mutually confirmed.   |
| 3. Returns and refunds policy                   |  |  |
| 3.1   | Returns and refunds policy   | Due to the nature of the Available Supplies, a refund on Available Supplies supplied by the School is not possible.  |
| 3.2   | If defective Available Supplies are supplied   | <ul style="list-style-type: none"> <li>• The Customer must contact the School in writing no later than 7 days after the Available Supplies are supplied to raise the issue.</li> <li>• The School will (if there are defects) then replace the defective product. No refund is available.</li> </ul>   |

3.3 Whether any of the above excludes the Customer's statutory rights

No.

#### 4. Fitness for purpose

4.1 Fitness for purpose

- The Available Supplies and any material on this Website have not been customised to the needs of any particular person.
- Accordingly, the School cannot promise that the Available Supplies will be fit for any particular purpose of the Customer. All warranties of this nature implied by Law are excluded to the fullest extent permitted by Law.

#### 5. Intellectual Property

5.1 Who owns Intellectual Property in Available Supplies (if any) and in materials contained in this Website

- It shall belong to the School or the School's third party licensors.
- Except as clearly indicated in these Terms and Conditions, the Customer shall acquire no right or interest in any such Intellectual Property.

5.2 **Rights of the Customer to use the School's Intellectual Property in the Available Supplies supplied by the School:** under a licence granted by the Customer on the following terms:

(a) When the licence commences

On delivery of the relevant Available Supplies.

(b) Main terms of the licence

It shall be under a non-exclusive, worldwide, perpetual, royalty-free licence.

(c) Permitted copying and use of the School's Intellectual Property by the Customer

- Only for the genuine internal use of the Customer in the conduct and administration of any school which it genuinely operates.
- Only for purposes for which the relevant Available Supplies are reasonably intended.
- No other purposes.

(d) **Prohibited copying and use of the Licenced Intellectual Property by each Customer:** copying or use for any of the following purposes, even if otherwise permitted above (including causing, instructing or assisting anyone else to engage in such copying or use):

(i) Compete

To compete with the School in providing similar materials, services or the like to schools or firms providing services to firms.

(ii) Publication

Publishing the Licenced Intellectual Property in any way.

(iii) Unlawful

For unlawful activity.

(iv) Bad publicity

In any way that (on a reasonable view) causes (or creates an unreasonable risk of causing) serious and unjustified adverse publicity to the School.

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|     | (v) Loss of rights or interests                                 | In any way that (on a reasonable view) causes (or creates an unreasonable risk of causing) the School to lose any rights or interests in the Licenced Intellectual Property.  |
|     | (e) Right of the Customer to assign or sub-licence this licence | No right, except with the prior written consent of the School (at discretion).  |
| 5.3 | Rights of the Customer to use the rest of this website          | <p>The Customer's rights to use other material on this Website (other than purchased Available Supplies) is limited to the Customer doing any of the following for its own internal purposes:</p> <ul style="list-style-type: none"> <li>• Displaying that material on a computer screen.</li> <li>• Storing material in electronic form on the Customer's own disc but not on any server or on any storage device connected to a network.</li> <li>• Printing off material for its own internal purposes.</li> </ul> |

## 6. The School's liability

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| 6.1 | Liability of the School to the Customer in relation to the following (regardless of whether arising in tort, contract, under statute or otherwise)                            |  |
|     | (a) In relation to the supply of Available Supplies   | <ul style="list-style-type: none"> <li>• It is limited (to the fullest extent permitted by Law) to a refund of amounts paid (if any) by the Customer for the relevant Available Supplies, subject to paragraph (b).</li> <li>• Given the nature of the Available Supplies, the Customer acknowledges that this is reasonable.</li> </ul> |
|     | (b) If the Customer fails (beyond trivial levels) to follow instructions etc. accompanying the relevant Available Supplies and/or shown on this Website at the time of supply | Excluded to the fullest extent permitted by Law.   |
|     | (c) In relation to other use of the Website by the Customer   | Excluded to the fullest extent permitted by Law.   |
|     | (d) In relation to any indirect or consequential loss of the Customer in the use of Available Supplies and/or this Website  | Excluded to the fullest extent permitted by Law.   |
| 6.2 | Whether anything in these Terms and Conditions limit or exclude the liability of any person to the extent that liability cannot be limited or excluded                        | No.  |

| 7. Public Forum |   |   |
|-----------------|---|---|
| 7.1             | Application of this section 7   | It applies to each contribution of the Customer from time to time, whether text, photographs, video other otherwise ( <b>Forum Contribution</b> ) to any blog, forum or the like ( <b>Forum</b> ) which the School may conduct from time to time on the Website in which inviting comments from members of the public.  |
| 7.2             | Moral rights to the Customer's Forum Contribution   | Waived to the fullest extent permitted by Law.  |
| 7.3             | Licence granted by the Customer to the School in relation to each of the Customer's Forum Contributions | Immediately on making the Forum Contribution, the Customer grants the School a non-exclusive, perpetual, royalty-free, irrevocable, licence (capable of being assigned or sub-licensed without requiring the Customer's permission and without being required to give the Customer notice) to in any way use, copy, or modify any of your Forum Contribution on the Website or on any replacement website.  |
| 7.4             | Obligation of the School to place or keep any Forum Contribution on the Website                         | No obligation whatsoever.   |
| 7.5             | Obligations of the Customer in relation to each of the Customer's Forum Contributions                   | <p>Not to make any Forum Contribution that does any of the following:</p> <ul style="list-style-type: none"> <li>• Breaches the Law of England and (if the Customer is based in a jurisdiction outside England), that other jurisdiction.</li> <li>• Defames another person.</li> <li>• Vilifies any person or group on the grounds of religion, race, nationality, gender, disability, sexual orientation, or any other form of vilification which is either unlawful or against normal public standards applying in England.</li> <li>• Breaches any duty (including a duty of confidentiality) the Customer may have to a third person (of whatever kind and however arising).</li> <li>• Is lewd or otherwise in bad taste.</li> <li>• Makes any threat against a person, group, property or otherwise.</li> <li>• May be construed by a reasonable person to be legal or other professional advice.</li> <li>• Appears to the reasonable person to attempt to do any of the following: <ul style="list-style-type: none"> <li>- Advertise or otherwise promote any venture (whether for profit or otherwise).</li> <li>- Impersonate another person.</li> <li>- Misrepresent the Customer's personal, business or other relationship with another person.</li> <li>- Disguise the origin of the contribution.</li> <li>- Collect the personal or other information of other users.</li> <li>- Limit or otherwise stop other users from using any part of the Website.</li> </ul> </li> <li>• Contains any virus or the like that is potentially harmful to the Website.</li> </ul> |
| 8. Links        |   |   |
| 8.1             | Application of this section 8   | To the creation of a link from the Customer's website to this Website ( <b>Link</b> ).  |

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| 8.2 | How the Customer creates a Link to the Website if the Customer wishes to do so | Via any registration or other procedure communicated on the Website from time to time.  |
| 8.3 | To where may the Customer may create the Link                                  | To the Customer's home page of the relevant website, and to no other page, except as permitted by the School.   |
| 8.4 | Rules regarding the continued use of the Link                                  | The website to which the Link is made must not do any of the following: <ul style="list-style-type: none"> <li>• Contain anything which breaks the Law of the place where that website is based;</li> <li>• Contain anything which may reasonably be considered to be obscene, defamatory, threatening, vilifying, or degrading.</li> <li>• Contain anything which infringes the intellectual property or other rights of third parties;</li> <li>• Bring up the content of that website onto another website.</li> </ul> |
| 8.5 | Obligation to remove the Link  | The Customer must do so promptly on the School's written request , if any of the rules described in clause 8.4 are breached.  |
| 8.6 | Rights of the Customer in relation to any Link permitted under this section 8  | The School grants the Customer a non-exclusive, non-transferable, royalty-free licence (not capable of sub-license) to use any trade mark or the like of the School. Such license shall be for the sole purpose of providing an underlined, textual link from the Customer's website to this Website and for such additional purposes which the School has permitted in writing.  |

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| <b>9. Confidentiality</b> |  |  |
| 9.1                       | 'Confidential Information' of the Customer   | The fact that the Customer has purchased any Available Supplies from the School.   |
| 9.2                       | Obligations of a School in relation to any piece of Confidential Information of a Customer                               | To keep that Confidential Information strictly in confidence, and not to disclose it to third parties.   |
| 9.3                       | Period obligations in clause 9.2 apply   | 3 years after the purchase of the Available Supplies, or such earlier date the Confidential Information enters the public domain other than due to the School's unauthorised disclosure.   |
| 9.4                       | Exceptions to the obligations of a School in clause 9.2 in relation to a piece of Confidential Information of a Customer | In any of the following circumstances, where relevant: <ul style="list-style-type: none"> <li>• <b>Consent:</b> with the prior written consent of the Customer, subject to the School's compliance with any conditions attached to that consent.</li> <li>• <b>To employees etc.:</b> to the School's (or Sheffield City Council's) genuine employees, advisers, contractors, consultants, agents, insurers, and banks for legitimate purposes connected with the supply of the relevant Available Supplies, and only on a need-to-know basis.</li> <li>• <b>Required by Law:</b> to the extent the School is required to disclose by any Law, including a court, a regulatory body, or under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004, as applicable.</li> </ul> |

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| <b>10. Third party rights</b>                      |   |   |
| 10.1   | Rights of third parties to these Terms and Conditions under the Contracts (Rights of Third Parties) Act 1999:   | These are excluded to the fullest extent permitted by Law.  |
| <b>11. Customer warranties and representations</b> |   |   |
| 11.1   | Capacity  | The Customer warrants that it has full capacity to agree to these Terms and Conditions according to the Law of the place where the Customer is based.   |
| <b>12. Amendments</b>                              |   |   |
| 12.1   | How these Terms and Conditions (as they apply between the School and the Customer) are amended  | <ul style="list-style-type: none"> <li>• By the School, at any time.</li> <li>• Any such amendment will not apply retrospectively to any event or circumstance (including any orders for Available Supplies) that occurred prior to the amendment, except with the Customer's written agreement.</li> </ul> |
| <b>13. Entire agreement</b>                        |   |   |
| 13.1   | Status of these Terms and Conditions  | Subject to this section 13, they represent the entire agreement between the parties on its subject matter.  |
| 13.2   | <b>Status of statements, warranties, representations, opinions or predictions of the future not described in these Terms and Conditions or elsewhere on the Website:</b> the School and the Customer acknowledge the following: |   |
| (a)  | Reliance  | It has not relied on any such statements, warranties, representations, opinions or predictions of the future in being encouraged to any dealings with the other party contemplated on the Website.  |
| (b)  | Acknowledgement of reasonableness   | That the statement in paragraph (a) is reasonable.  |
| (c)  | Where liability for misrepresentation cannot be limited etc.  | Nothing in these Terms and Conditions shall be read to exclude or limit a party's liability for its fraudulent misrepresentation, or for any other liability to the extent it cannot be excluded or limited according to Law.   |
| <b>14. Relationship between the parties</b>        |   |   |
| 14.1   | Nature of relationship created by any these Terms and Conditions between the Lead Client and the Provider   | That between a client and genuinely independent supplier in the business of providing goods and/or services to the public generally or to particular sections of it.  |

14.2 Indicate relationships NOT created by these Terms and Conditions between the parties

Any relationship authorising one party to legally bind the other (e.g. partnership, principal-agent etc.).

**15. Dispute resolution**

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| 15.1 Application of this section 15  | <ul style="list-style-type: none"> <li>To the resolution of any dispute between the parties in relation to matters connected with these Terms and Conditions.</li> <li>This section applies except to the extent otherwise agreed in writing by the parties to the dispute.</li> </ul>  |
| 15.2 Mediation   | If the parties cannot resolve the dispute within 30 days of starting to do so, they shall promptly refer the matter to mediation, subject to this section 15.   |
| 15.3 How mediation is commenced  | By either party giving each other party to the dispute a notice (strictly according to section 17 (Notices)) requesting mediation, such notice to summarise in reasonable detail the dispute (as understood in good faith by the party giving that notice).   |
| 15.4 Mediation procedure to be used  | The Model Mediation Procedure of the Centre for Effective Dispute Resolution ('Centre') or the comparable rules of any successor body.  |
| 15.5 How the mediator is appointed   | <ul style="list-style-type: none"> <li>By agreement of the parties (acting promptly and in good faith). They shall appoint a suitably qualified, independent mediator.</li> <li>If they cannot agree on a mediator within 7 days of first considering the issue, they shall request Centre to recommend a mediator, and they shall accept the person recommended.</li> </ul>  |
| 15.6 General obligations of the parties in the course of the mediation         | <p>All of the following:</p> <ul style="list-style-type: none"> <li>To act generally in good faith.</li> <li>To co-operate fully and promptly with the mediator, including promptly doing such acts (including signing a document substantially in the form of the Centre's model agreement in force from time to time) as the mediator reasonably requires.</li> <li>To direct their respective appropriate employees to attend and cooperate with the mediation properly and in good faith.</li> <li>To carry out the mediation in strict confidence and without prejudice to their respective rights in any later proceedings between them.</li> <li>Not to engage (in connection with further proceedings involving the dispute) the mediator as an advisor and/or to call him/her as a witness.</li> </ul> |
| 15.7 How mediation costs are to be borne                                       | The parties shall share equally the costs of engaging the mediator but otherwise to bear their own costs.   |
| 15.8 Right of a party to commence legal proceedings in relation to the dispute | <ul style="list-style-type: none"> <li>A party may do so if the dispute is not resolved by mediation after at least 90 days from commencement of mediation.</li> <li>Nothing in this section 15 (or in these Terms and Conditions generally) shall prevent a party seeking specific performance or injunctions or other remedies of a similar nature in relation to matters relevant to these Terms and Conditions.</li> </ul>  |

**16. Assignment**

16.1 Consent of the Customer required if the School wishes to assign its rights, powers and benefits under these Terms and Conditions

No consent required.

16.2 Consent of the School required if the Customer wishes to assign its rights, powers and benefits under these Terms and Conditions

Only with the prior written consent of the School, not to be unreasonably withheld.

**17. Notices**

17.1 Application of this section 17

- To the rules for giving notices (and other communications indicated in these Terms and Conditions to be subject to this section 17) between the Provider and the Lead Client.
- These rules must be strictly followed for the notice or other relevant communication to be valid.

17.2 How notices must be given

- In writing, in English and in a reasonably legible manner.
- **In the case of notices to the School:** addressed to the Headteacher.

17.3 **Methods by which notices must be given to be valid:** (in at least one of the following ways):

**Method**

**When notice is deemed given**

(a) By registered mail or courier to the recipient's party's last known address

2 business days (or 5 business days if sent internationally) after the day it was sent (as evidenced by the post mark, despatch notice or other relevant evidence).

(b) By fax to the recipient's last known fax number

When the last page has been successfully transmitted, as evidenced by a transmission notice or other reasonable evidence. If the transmission of the last page is not between 9 am and 5 pm on a business day it shall be deemed to have been received at 9 am on the next Business Day.

17.4 Whether notices by e-mail are in themselves valid for notices and other communications to be subject to this section 17:

No. This does not prevent informal communications by e-mail.

**18. Severance**

18.1 **Severance of parts of these Terms and Conditions which are invalid, unenforceable etc.:** where anything in these Terms and Conditions is held by any court or similar body of competent jurisdiction to be invalid or unenforceable for any reason, the following shall apply:

(a) First step:

If possible, that part of these Terms and Conditions shall be modified by removing or altering those parts of that provision that create the invalidity or unenforceability, such removal or alteration to be to the minimum extent necessary to allow the provision to be held to be valid and enforceable, having regard to the purpose of the offending provision.

(b) Second step:

- If the action required in paragraph (a) is not reasonably possible, the entire part of these Terms and Conditions shall be severed from these Terms and Conditions unless it alters the fundamental nature of these Terms and Conditions, or is otherwise against public policy.
- The remainder of these Terms and Conditions shall be unaffected.

## 19. Governing law and jurisdiction

- 19.1 Law under which these Terms and Conditions is to be interpreted and generally governed
- 19.2 Jurisdiction to exclusively apply to disputes arising in connection with these Terms and Conditions

English law.

English courts.

## 20. Definitions

The following words and expressions shall be given the meaning given to them respectively below, except to the extent the context otherwise requires:

| Defined term                    | Definition  |
|---------------------------------|---|
| <b>Available Supplies</b>       | Goods and/or services made available from time to time by the School on the Website.  |
| <b>Confidential Information</b> | See clause 9.1.   |
| <b>Forum</b>                    | See clause 7.1.   |
| <b>Forum Contribution</b>       | See clause 7.1.   |
| <b>Intellectual Property</b>    | Copyright, trade marks (whether registered or otherwise), service marks (whether registered or otherwise), patents, design rights (whether capable of registration or otherwise), registered designs, domain names, know how rights, rights in relation to databases, trade secrets, rights to take action for passing off, Confidential Information, and all other relevant intellectual property rights as ordinarily recognised as such throughout and in any parts of the world, and in relation to the items so listed in this definition, all registrations, pending registrations, reversions, extensions and renewals of such rights. |
| <b>Law</b>                      | Any statute, regulation or other subordinate legislation, directive or other European instrument, industry code of conduct, treaty, judgement, rule of common law or equity, rule of any applicable stock exchange, order by a competent court, consents, guidance or the like issued by authorised government bodies (whether legally binding or not), or anything else having a legally binding effect on the respective activities connected with these Terms and Conditions of either or both of the parties (as the context requires).   |
| <b>Link</b>                     | See clause 8.1.   |
| <b>Terms and Conditions</b>     | These terms and conditions as amended from time to time according to clause 12.1.   |
| <b>Website</b>                  | The Website on which these Terms and Conditions appear.   |

## **21. Interpretation**

Except to the extent the context otherwise requires, these Terms and Conditions and the Work Order shall be interpreted as follows:

- 21.1 Reference to any party is a reference to a party to these Terms and Conditions, and includes reference to that party's successors in title and permitted assignees.
- 21.2 Where consent, approval, permission or the like of a person is not to be unreasonably refused, it also cannot be unreasonably delayed or subject to unreasonable conditions. Where consent, approval, permission or the like of a person is to be at that person's discretion, it shall not be obliged to respond to a request for it, nor obliged to give reasons for its decision, nor liable to any person for any reason given for that decision.
- 21.3 Reference to one gender refers to all genders; reference to the singular includes the plural and vice versa; reference to any particular type of body, firm or other entity includes reference to any other type of body, firm or other entity.
- 21.4 If a word or phrase is defined in these Terms and Conditions, its other grammatical forms have a corresponding meaning.
- 21.5 Reference to any statute, code or the like includes reference to any of these which amends, replacing, modifying or consolidating statute, code or the like on substantially similar subject matter.
- 21.6 Use of the expression 'in writing' (or a similar word) includes (but is not limited to) an e-mail.
- 21.7 Use of the word 'including' (or a similar word) at the commencement of a list to illustrate a particular concept is deemed not to limit or restrict that concept in any way.