

THE VICI
LANGUAGE
ACADEMY LLP
Terms &
Conditions

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 6.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.8.

Contract: the contract between the Supplier and the Customer for the supply of Services and any other services provided by the Supplier to the Customer shall be in accordance with these Conditions unless notified by the Supplier.

Customer: the person, firm or company who purchases the Services from the Supplier, as set out in the Order.

Deliverables: the language package as set out in the Order.

Full Cost of Membership: the full cost of membership price as set out in the Order.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software,

database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the order by the Customer for the supply of Services, as set out overleaf.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification for the Services as provided in the catalogues or brochures of the Supplier, the Order or in writing by the Supplier to the Customer.

Supplier: The Vici Language Academy LLP (registered in England and Wales with company number OC359195).

Supplier Materials: all materials, equipment, documents and other property of the Supplier.

Supplier's Premises: Arcade House, The Arcade, Newbury, Berks RG14 5AD

1.2 **Construction.** In these Conditions, the following rules apply:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its personal representatives, successors or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory

provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier signs the Order at which point and date the Contract shall come into existence (Commencement Date).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the catalogues or brochures of the Supplier, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade,

custom, practice or course of dealing.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier shall have the right to make any changes to the Services (including the Supplier's Premises location) which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill but provides no warranty in respect of Customer obtaining any qualification in respect of the Deliverable.

4. OBLIGATIONS OF THE CUSTOMER

4.1 The Customer shall:

(a) ensure that the terms of the Order are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the Services;

(c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

(d) use its best endeavours to comply with any progress target set by the Supplier;

(e) obtain the Supplier's consent (which may be withheld in the absolute discretion of the Supplier) before bringing a guest;

(f) attend sessions in accordance with their Deliverable (or where the Deliverable contains no time limit, the Customer shall attend at least once every three months); and

(g) where the Services are to be provided at the Customer's premises:

(i) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the premises of the Customer, office accommodation and other facilities as reasonably required by the Supplier;

(ii) prepare the premises of the Customer for the supply of the Services;

(iii) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;

(iv) keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the premises of the Customer in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the written instructions or authorisation of the Supplier.

4.2 The Supplier's money back guarantee policy shall be void if the Customer fails to meet any of the conditions listed at clause 4.1.

4.3 If the performance of the Supplier of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or

failure by the Customer to perform any relevant obligation **(Customer Default):**

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the performance of the Supplier of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the failure or delay of the Supplier to perform any of its obligations as set out in this clause 4.3; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. FACE TO FACE COACHING

This clause 5 shall only apply where the Deliverable includes face to face coaching.

5.1 Every face to face coaching session is to take place at the Supplier's Premises at a mutually agreeable time between the Supplier and the Customer.

5.2 Any face to face coaching session not taken during this agreed time will be forfeited by the Customer and result in the full hourly rate being charged, unless:

(a) this forfeiture was caused by the Supplier not being able to provide a qualified language coach; or

(b) the Customer has given more than 48 hours advanced notice that they

will not be able to make their session; or

(c) it is agreed otherwise in the absolute discretion of the Supplier.

5.3 In the event of non-availability, an alternative qualified language coach will be offered. If an alternative cannot be found within three weeks then a refund is to be offered based on the number of face to face coaching sessions not used.

5.4 Dependant upon the Deliverable, the Customer may be given private study in preparation for the next face to face language coaching session in accordance with programme set by the language coach and this may involve any additional correspondence/contact with the language coach.

5.5 The Customer shall not solicit the services of any language coach supplied by the Supplier for its own teaching purposes.

6. CHARGES AND PAYMENT

6.1 The Charges shall be as set out in the Order and shall apply regardless of whether the Customer attends the Services, unless stated otherwise in these Conditions.

6.2 The Supplier reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any six month period. The Supplier will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within two weeks of the date of the notice provided by the Supplier and the Supplier shall have the right without limiting its other rights or remedies to terminate the

Contract by giving two weeks' written notice to the Customer.

6.3 Unless the Customer has paid the Full Cost of Membership in full on the date of the Contract or it is agreed at the Supplier's absolute discretion otherwise, the Customer shall pay the Charges by banker's Direct Debit order on the fifth day of every month. Funds shall be in full and in cleared funds to the bank account nominated in writing by the Supplier and time for payment shall be of the essence of the Contract.

6.4 All amounts payable by the Customer under the Contract are inclusive of amounts in respect of value added tax chargeable for the time being **(VAT)**.

6.5 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment **(Due Date)**, the Supplier shall have the right to charge interest on the overdue amount at the rate of 4% per annum above the then current base rate of National Westminster Bank Plc accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

6.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off

any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

6.7 The Customer may swap language choice once free of charge. Changing more than once will result in additional charges being incurred by the Customer.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

7.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the use by the Customer of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

7.3 All Supplier Materials are the exclusive property of the Supplier.

8. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the business of Disclosing Party or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to

know it for the purpose of discharging the obligations of the Receiving Party under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 8 shall survive termination of the Contract.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude the liability of the Supplier for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
(b) fraud or fraudulent misrepresentation; or
(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.2 Subject to clause 9.1:

(a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
(b) the total liability of the Supplier to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Full Cost of Membership.

9.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent

permitted by law, excluded from the Contract.

9.4 This clause 9 shall survive termination of the Contract.

10. TERMINATION

10.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within fourteen days of receipt of notice in writing of the breach;

(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) the other party (being an individual) is the subject of a bankruptcy petition order;

(f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen days;

(g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

(h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(b) to clause 9.2(i) (inclusive); or

(k) the other party suspends or ceases, or threatens to suspend or cease, to carry

on all or a substantial part of its business.

10.2 Without limiting its other rights or remedies, the Customer (or their personal representatives) may terminate the Contract on one months notice by giving written notice to the other party if:

(a) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical and has provided the Supplier with a medical certificate issued by the Customer's local doctor stating that the illness is permanent and precludes any future use of the Services), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or

(b) The Customer permanently relocates over 25 miles from the Supplier's Premises and two forms of relocation evidence are supplied to the Supplier.

10.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract on one months notice by giving written notice to the other party if, in the reasonable opinion of the Supplier, the Customer after having been given notice of its behaviour is continuing to act in a disorderly manner which is materially preventing Services being provided to themselves or other customers of the Supplier.

10.4 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.5 Without limiting its other rights or remedies, each party shall have the

right to terminate the Contract by giving the other party six months' written notice.

10.6 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1(a) to clause 10.1(k), or clause 10.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

11. CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract for any reason:

(a) the Customer shall immediately pay to the Supplier all of the outstanding unpaid invoices and interest of the Supplier and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11.2 In addition to clause 11.1, where termination of the Contract is subject to any of the events listed in clause 10, the Supplier can

in its absolute discretion demand the Customer pay a forty five pound (£45.00) cancellation fee.

11.3 Upon termination of the Contract (howsoever arising but without prejudice to any other rights or remedies the Customer may have) the Supplier is under no obligation to provide any refund to the Customer and it is in the Supplier's absolute discretion as to whether a refund is provided. Any refunds that are provided by the Supplier will be paid to the Customer within 12 weeks of termination of the Contract.

12. GENERAL

12.1 Force majeure:

(a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

(b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 2 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this

Contract immediately by giving written notice to the Customer.

12.2 Assignment and subcontracting:

(a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

(b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12. Notices:

(a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

(b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

(c) This clause 12.3 shall not apply to the service of any proceedings or other

documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

12.4 Waiver:

(a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12.5 Severance:

(a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.6 No partnership: Nothing in the Contract is intended to, or shall be

deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

12.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

12.8 Variation: Except as set out in these Conditions, any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.

12.9 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.