

TERMS AND CONDITIONS

1. Interpretation

1.1 The definitions and rules of interpretation in this Condition apply in these terms and conditions:

Conditions	means these terms and conditions;
Customer	the person, firm or company who purchases Services from the Supplier;
Intellectual Property Rights	all copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, rights in designs, 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;
Price Services	means the price of the Services; the services to be provided by the Supplier as set out in the Quotation;
Supplier	myAko Limited (Company No 11309590) whose registered office is at Kemp House, 152-160 City Rd, London EC1V 2NX
Training Materials Contract	all documents, information and materials provided by the Supplier relating to the Services; means the quotation provided to the Customer by the Supplier specifying the detailed Services and the Price;
VAT	value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these conditions.

2. Application of conditions

2.1 These Conditions shall apply to and be incorporated into the contract between us, the Supplier, and prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a Quotation, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's purchase order, or the Customer's acceptance of a Quotation from the Supplier, constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than by a written acknowledgement issued and executed by the Supplier or (if earlier) by the Supplier starting to provide the Services, when a contract for the supply and purchase of those Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern the contract.

2.3 Quotations are given by the Supplier on the basis that no contract shall come into existence except in accordance with condition 2.2. Any Quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it. A signed contract will be valid for the period stated within it.

3. Commencement and duration

3.1 The Services supplied under the contract shall be provided by the Supplier to the Customer from the date of the contract or the commencement of the provision of services whichever is later.

3.2 The contract shall continue until the end date specified in the Quotation or until all of the Services specified in the Quotation have been performed unless the contract is terminated in accordance with Condition 11.

4. Supplier's obligations

4.1 Subject to receipt in cleared funds of the Price where the Supplier has invoiced the Customer in advance of providing the Services, the Supplier shall use reasonable endeavours to provide the Services and the Training Materials to the Customer at the Customer's premises or such other venue as specified in the Quotation.

4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence of the contract.

4.3 The Supplier shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under condition 5.1.4, provided that it shall not be liable under the contract if, as a result of such observation, it is in breach of any of its obligations under the contract.

5. Customer's obligations

5.1 The Customer shall:

- 5.1.1 co-operate with the Supplier in all matters relating to the Services;
- 5.1.2 provide, for the Supplier, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, and other facilities as requested by the Supplier;
- 5.1.3 provide, in a timely manner, such information as the Supplier may request and ensure that it is accurate in all material respects;

5.2 and obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, insofar as such licences, consents and

5.3 If the Supplier's performance of its obligations under the contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

5.4 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

6. Charges and Payment

6.1 The Price for the Services shall be the amount specified in the Quotation which may be payable in advance of the Supplier providing certain Services, as specified in the Quotation. The Price excludes VAT, which the Supplier shall add to its invoices at the appropriate rate.

6.2 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds within 14 days of the invoice date or the alternative payment due date if the contract specifies such an alternative payment due date. The Customer is not entitled to set off against any invoice amounts due to the Customer from the Supplier.

6.3 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyd's Bank, and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 suspend all Services until payment has been made in full.

6.4 Time for payment shall be of the essence of the contract.

6.5 All sums payable to the Supplier under the contract shall become due immediately on its termination unless terminated for Supplier's breach. This condition 6.5 is without prejudice to any right to claim for interest under the law, or any such right under the contract.

6.6 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

6.7 Licenses. myAko licenses are valid for 12 months only, if they are not utilised during this period, they will automatically cease. The customer can allocate these licenses in accordance with the agreed contract.

7. Intellectual property rights

7.1 The Customer acknowledges that all Intellectual Property Rights in the services and training provided by the Supplier, whether imparted electronically or by any other means, to include all images, wording, formatting and methodology and all other rights in Training Materials are the property of the Supplier. Subject to condition 7.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services.

7.2 The Customer acknowledges that, where the Supplier does not own any Training Materials, the Customer's use of rights in Training Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

8. Confidentiality

8.1 The Customer shall keep in strict confidence all technical or commercial know-how, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents or sub-contractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

8.2 This condition 8 shall survive termination of the contract, however arising.

9. Limitation of liability

9.1 This condition 9 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- 9.1.1 any breach of the contract.
- 9.1.2 any use made by the Customer of the Services, the Training Materials or any part of them; and
- 9.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the contract.

- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the contract.
- 9.3 Nothing in these Conditions limits or excludes the liability of the Supplier for death or personal injury resulting from negligence or for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation directly or indirectly by the Supplier or any third parties appointed by the Supplier or for any liability which may not be lawfully excluded.
- 9.4 Subject to condition 9.2 and condition 9.3:
- 9.4.1 the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
- 9.4.1.1 loss of profits; or
- 9.4.1.2 loss of business; or
- 9.4.1.3 depletion of goodwill and/or similar losses; or
- 9.4.1.4 any special, indirect, consequential or pure economic loss, or pure economic loss, costs, damages, charges or expenses.
- 9.4.2 the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the contract shall be limited to 50% of the Price.
- 10. Data Protection & General Data Protection Regulations ("GDPR")**
- The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services. The Supplier confirms they will comply with their duties as a GDPR processor as required under these regulations.
- 11. Termination**
- 11.1 The Supplier may terminate the contract immediately on giving one month's notice to the Customer and without liability to the Customer in the event that the Supplier is prevented from supplying the Services due to illness or incapacity of any of its employees or sub-contractors and the Supplier is unable to find a suitable alternative.
- 11.2 Subject to condition 11.4, the contract shall terminate automatically on the date of termination set out in the Quotation or, if earlier when all the Services specified in the Quotation have been performed. The Supplier will not provide any unused Services at the date of termination and unused Services are non-refundable.
- 11.3 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the contract without liability to the other immediately on giving notice to the other if:
- 11.3.1 the other party commits a material breach of any of the terms of the contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- 11.3.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- 11.3.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- 11.3.4 a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- 11.3.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- 11.3.6 the other party ceases, or threatens to cease, to trade; or
- 11.3.7 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 11.4 On termination of the contract for any reason:
- 11.4.1 subject to the Contract not having been terminated due to the Supplier's breach the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- 11.4.2 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 12. General**
- 12.1 The Supplier shall have no liability to the Customer under the contract if it is prevented from or delayed in performing its obligations under the contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including 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 sub-contractors.
- 12.2 No variation of the contract or these Conditions shall be valid unless it is in writing and signed by an authorised person or on behalf of each of the parties.
- 12.3 A waiver of any right under the contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. Unless specifically provided otherwise, rights arising under the contract are cumulative and do not exclude rights provided by law.
- 12.4 If any provision (or part of a provision) of the contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 12.5 Each of the parties acknowledges and agrees that, in entering into the contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the contract, other than as expressly set out in the contract.
- 12.6 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the contract. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the contract subject to the prior written consent of the Customer.
- 12.7 Nothing in the contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in anyway.
- 12.8 The contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
- 12.9 Notice given under the contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 12.9 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.
- 12.10 The contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the contract or its subject matter.