

## Terms and Conditions of Sale for a Single Licence

The University of Warwick ("Warwick", "we", "us" or "our" in these terms) is the supplier of the Digital Content. Our administrative office is located at University House, Kirby Corner Road, Coventry CV4 8UW, England. The terms "you" and "your", when used in these Terms, refer to you as the customer.

### **1. DEFINITIONS AND INTERPRETATION**

1.1 When the following words with capital letters are used in these terms, this is what they will mean:

"**Digital Content**" means the resources available via the internet or mobile device from the LMI Learning Module ([www.warwick.ac.uk/go/ngrf/lmimodule](http://www.warwick.ac.uk/go/ngrf/lmimodule)) including but not restricted to documents, video, audio, flash content and quizzes.

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how ) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"**Licence Fee**" means the price stated on Our Website at the time of placing your order online.

"**Licence Term**" means the term of one calendar year commencing on the Start Date.

"**Our Website**" means [www.warwick.ac.uk/go/ngrf/lmimodule](http://www.warwick.ac.uk/go/ngrf/lmimodule).

"**Permitted Purpose**" means learning, teaching and professional development.

"**Start Date**" means the date that access to the Digital Content is actually granted as per clause 3.4.

1.2 Clause, schedule and paragraph headings will not affect the interpretation of this Agreement.

### **2. ELIGIBILITY AND AVAILABILITY**

2.1 By purchasing a licence under these terms you warrant that you are

(a) Ordering one licence only; and

(b) Legally capable of entering into binding contracts.

### **3. OUR CONTRACT WITH YOU**

3.1 These are the terms and conditions upon which we supply access to the Digital Content to you.

#### **3.2. Online Through Our Website**

3.2.1 You may place an order directly through Our Website (an "**Online Order**") only.

3.2.2 For Online Orders we only accept payment by debit or credit card.

### 3.3 **Acknowledgement Email**

3.3.1 Once you have submitted your Online Order you will receive an email acknowledgement of receipt. This does not mean that we have accepted your order. Submission of your Online Order constitutes an offer to us to purchase a licence to gain access to the Digital Content. All Online Orders are subject to our acceptance.

### 3.4 **Acceptance of Your Order**

Acceptance of your order will only take place when we grant you access to the Digital Content and send an email with a password for access to the LMI Learning module.

### 3.5 **Contract Formation**

3.5.1 A contract will only be formed between you and us:

3.5.1.2 in respect of Online Orders when we grant you access to the Digital Content and send an email with a password for access to the LMI Learning module.

3.5.2 Please ensure that you read these terms carefully, and check that the details on your order and these terms are complete and accurate before you submit the Online Order. If you think that there is a mistake, please email us to discuss, and please make sure that you ask us to confirm any changes in writing to avoid any confusion between us.

## 4. **LICENCE**

4.1 Once we are in receipt of cleared funds for payment of the Licence Fee we will grant you a non-exclusive, non-transferable, worldwide licence to use the Digital Content for the Permitted Purpose for the duration of the Licence Term.

## 5. **LICENCE RESTRICTIONS**

5.1 We require that each user accessing the Digital Content has accepted online the “User Terms of Use”. This acceptance will acknowledge that his or her rights to access the Digital Content are governed by this Licence and agreeing to cease using the Digital Content if this Agreement is terminated under clause 11. Details of the “User Terms of Use” can be found online at <http://www.warwick.ac.uk/go/ngrf/lmimodule/user-docs>.

5.2 You will:

- (a) provide adequate security and encryption to protect the security of the Digital Content;
- (b) promptly comply with our reasonable instructions from time to time concerning use and operation of the Digital Content;
- (c) Only use the Digital Content for the Permitted Purpose
- (d) comply with all applicable laws in exercising your rights under these terms;
- (e) not change, amend or develop the Digital Content in any way; and
- (f) not make any copies of the Digital Content, reverse-engineer or decompile the Digital Content (other to the extent permitted by law and these terms) or make any modification, amendment or adaptation to the Digital Content.

## 6. **LICENCE**

6.1 Digital Content is licensed for the permitted purpose only and may not be used for or in connection with any commercial purpose.

6.2 You may not allow any other person to log on to your account.

6.3 You may allow others to view the Digital Content while you are yourself present and logged in to your account.

6.4 You are solely responsible for all use of your account.

6.5 The Digital Content is licensed to the named individual only and the username, password and licence must not be shared or transferred.

## **7. PRICE AND DESCRIPTION**

### **7.1 The Licence Fee**

7.1.1 The price of the Licence Fee as specified on Our Website from time to time will be subject to withdrawal at any time before the receipt of an Online Order from you.

7.1.2 The Licence Fee stated on our website will be in UK Sterling and includes applicable VAT for orders within the European Union. However, if the rate of VAT changes between the date of your order and the date of full delivery or performance, we will adjust the rate of VAT that you pay, unless you have already paid for the Digital Content in full before the Change in the rate of VAT takes effect.

### **7.3 Description**

7.3.1 The description of the Digital Content you order will be as shown on Our Website at the time that you submit your order, save in cases of obvious error.

7.3.2 We try to ensure that all descriptions of the Digital Content and prices are accurate. On the rare occasion that there is an error we will advise you about it as soon as reasonably possible and will offer you the option of reconfirming your order or cancelling your order. If you cancel under this clause, we will refund or credit you for any sum which has been paid by you or debited from your credit card or other account for the Digital Content.

7.3.3 The Digital Content will be made available for you to stream only and you are not permitted to download any of the Digital Content. However, your web browser may incidentally create a transient copy of Digital Content from your viewing session which is permitted, except that you may not keep the transient copy, or copy, post, modify, distribute, reproduce or publish it in any way.

## **8. ACCESS TO DIGITAL CONTENT**

### **8.2 Online Orders**

8.2.1 To make an Online Order you must set up an account on Our Website.

8.2.2 Once you have placed your Online Order, you will receive an email; this email will contain your password which you will need to access the Digital Content.

8.2.3 When your online payment is complete you will be granted immediate access to the Digital Content through your account.

### **8.3 Password Security**

8.3.1 Your password is unique to you and you will be entirely responsible for keeping your password confidential. You agree not to disclose your password to anyone.

8.3.2 If you suspect or have reason to believe that somebody else is using your password to gain access to the Digital Content you agree to notify us immediately, upon which we will reset your password and supply you with a new password. You are responsible for any activity under your username and/or password unless and until you have notified us. The new password will be sent to the email address that you provided on your Online Order unless you have advised us otherwise.

## 8.4 System Requirements

8.4.1 It is up to you to make all arrangements necessary for you to access the Digital Content.

8.4.2 Web browser:

8.4.2.1 For the best possible experience, we strongly recommend that you use the latest available version of your chosen web browser. The following browsers are recommended:

- (a) Firefox 11+;
- (b) Internet Explorer 9+;
- (c) Safari 5+; or
- (d) Google Chrome 18+.

8.4.2.2 Adobe Flash Player:

Your browser may also require the Adobe Flash Player (10.0.22+ required, 11.2+ recommended) in order to display video.

8.4.2.3 Other requirements:

The Website requires that JavaScript and cookies be enabled in order to provide some functionality and that pop up blockers are switched off.

8.4.3 In order to reduce the potential for you to experience difficulties when accessing and using the Digital Content, we strongly recommend but do not oblige you to:

- (a) use a strong broadband connection; and
- (b) if you have firewall software protection operating on your machines ensure that firewall protection allows the possibility of video streaming.

## 8.5 Software Requirements

8.5.1 You may be required to download third party software in order to be able to use the Digital Content including Adobe Flash Player.

8.5.2 Your use of any third party software is at your own risk. Subject to clause 14 we accept no liability for the availability of such software or for any problems that may arise as a result of your downloading or installing any third party software.

## 8.6 Temporary Suspension of Access

Access to the Digital Content may be suspended temporarily without notice in the case of system failure, maintenance or repairs for reasons beyond our control.

## 9. DELIVERY

The Digital Material shall be delivered to you by the granting to you of online access to the LMI Learning module via a unique password emailed to you.

## 10. INTELLECTUAL PROPERTY

10.1 Warwick owns all the Intellectual Property Rights in the Digital Content. These terms will not transfer any ownership in our or our licensors' technology or Intellectual Property Rights. You will inform us immediately if you become aware of any infringement of the University of Warwick's Intellectual Property Rights and provide such assistance as we may reasonably request. If any Digital Content becomes, or in our opinion is likely to become subject to an infringement claim, we may (at our option and expense):

- (a) obtain the right for you to continue using the Digital Content;

- (b) modify or replace the Digital Content to avoid the infringement claim; or
  - (c) if in our opinion neither (a) or (b) is commercially reasonable, terminate our agreement with you and provide a partial refund of the Licence Fee on a pro rata basis.
- 10.2 Subject to clause 7.3.3 you will not copy the Digital Content, issue any copies to or rent or lend the Digital Content to the public, perform or present any of the Digital Content or communicate it to the public or make an adaptation of the Digital Content.

## **11. CANCELLATION**

- 11.1 This Agreement is for the Licence Term.
- 11.2 Before we begin to provide access to the Digital Content, you have the following rights to cancel, including where you choose to cancel because we are affected by an Event Outside Our Control under clause 15.3 or if we change these terms under clause 15.8 to your material disadvantage:
- (a) You may cancel at any time before we email the password for access to the LMI Learning module by contacting us. We will confirm your cancellation in writing to you.
  - (b) If you cancel an order under 11.2(a) and you have made any payment in advance for access to Digital Content that has not been provided to you, we will refund these amounts.
- 11.3 You may cancel this Agreement on written notice to us at [guidance.research@warwick.ac.uk](mailto:guidance.research@warwick.ac.uk) any time up to 7 working days after the day when the contract is made under clause 3.5.
- 11.4 However, you will not have the right to cancel under clause 11.3 once you have accessed the digital content using the username and password that has been issued to you.
- 11.5 The University of Warwick may cancel this Agreement upon written notice to you and with immediate effect if you fail to pay any sum properly due under this Agreement.
- 11.6 Upon cancellation we will terminate your access to the Digital Content and you must immediately cease all use of the Digital Content.

### **Termination For Other Entities**

- 11.6 We may (by written notice to you) terminate our agreement with you immediately if:
- (a) your payment is subject to a chargeback from your credit or debit card company; or
  - (b) you commit any material breach of your obligations under these terms which is incapable of remedy, or if capable of remedy, is not remedied within 10 Business Days of us giving written notice requiring the breach to be remedied; or
  - (c) you challenge or dispute our or our licensor's ownership of, or rights in, the Digital Content, or the validity of those rights; or
- 11.7 On any expiry or termination of this agreement:
- (a) all rights and authorisations granted by us to you under this agreement shall automatically terminate and immediately revert to us; and
  - (b) we will terminate your access to the Digital Content and you shall immediately cease all use of the Digital Content.

## **12. WARRANTY**

We warrant to you that the Digital Content purchased from us will, on delivery and for the Licence Term, conform in all material respects with its description, be of satisfactory quality, and be reasonably fit for the Permitted Purpose.

## **13. DATA PROTECTION AND PRIVACY**

13.1 We will use the personal information that you provide to us to:

- (a) provide access to the Digital Content;
- (b) process your payment; and
- (c) inform you about similar products or services that we provide, but you may stop receiving these at any time by contacting us.

13.2 Any personal data we collect about you will be treated and used only in accordance with the applicable Privacy Policy available on Our Website at <http://www.warwick.ac.uk/go/ngrf/lmimodule/user-docs>.

## **14. LIABILITY**

### **For Individuals**

14.1 If we fail to comply with these terms and conditions, we are responsible for loss or damage that you suffer that is a foreseeable result of our breach of the terms and conditions or our negligence, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of our breach or if they were contemplated by you and us at the time we entered into this Agreement.

14.2 We only supply the Digital Content to individuals for domestic and private use. You agree not to use the Digital Content for any commercial, business or re-sale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

14.3 We do not in any way exclude or limit our liability for:

- (a) death or personal injury caused by our negligence;
- (b) any breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (c) breach of the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 (description, satisfactory quality, fitness for purpose and samples); and
- (d) any other matter for which it would be illegal for us to exclude or attempt to exclude our liability which is limited to the monies paid under the licence.

### **For Other Legal Entities**

14.4 Save where expressly provided, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the maximum extent permitted by law.

14.5 Nothing in this licence shall operate to exclude or limit our liability for:

- (a) death or personal injury caused by its negligence;
- (b) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

- (c) fraud; or
  - (d) any other liability which cannot be excluded or limited under applicable law.
- 14.6 Save as provided in clauses 14.4 and 14.5 we shall have no liability for any losses or damages which may be suffered by you (or any other person claiming under or through you) for any loss of profit, loss of business, loss of goodwill, loss of savings, claims by third parties, loss of anticipated savings, indirect loss or consequential loss whatsoever and howsoever caused, suffered indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever.
- 14.7 Subject to clause 14.4 and 14.5 our liability, whether in contract, tort (including negligence), or otherwise and whether in connection with this licence or any collateral contract, shall not exceed the value of the Licence Fee.

## **15. GENERAL**

### **15.1 Written Communications**

Applicable laws require that some of the information or communications we send to you should be in writing. When using our site, you accept that communication with us will be mainly electronic. We will contact you by e-mail or provide you with information by posting notices on Our Website. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contract, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights.

### **15.2 Transfer of Obligations**

15.2.1 We may transfer our rights and obligations under these terms and conditions to another organisation, but that will not affect your rights or our obligations under this Agreement.

15.2.2 You may not transfer your rights and obligations under this Agreement.

### **15.3 Events Outside Our Control**

15.3.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an event outside our control (an "**Event Outside Our Control**").

15.3.2 An Event Outside Our Control means any act or event beyond Our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.

15.3.3 If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:

- (a) We will contact you as soon as reasonably possible to notify you; and
  - (b) Our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects the availability of the Digital Content, We will make the Digital Content available as reasonably possible after the Event Outside Our Control is over.
- 15.3.4 You may cancel the contract if you are an individual and an Event Outside Our Control takes place and you no longer wish us to provide access to the Digital Content. Please see your cancellation rights clause 11. We will only cancel the contract if the Event Outside Our Control continues for longer than 4 weeks in accordance with our cancellation rights in clause 11.

**15.4 Severability**

If any court or competent authority decides that any of the provisions of these terms or any provisions of our Agreement is invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

**15.5 Entire Agreement**

15.5.1 These terms and any document referred to in them constitute the whole agreement between us and supersede all previous discussions, correspondence, negotiations, previous arrangement, understanding or agreement between us relating to the subject matter of this Agreement

**15.6 Law and Jurisdiction**

Contracts for the purchase of Digital Content through Our Website, and any dispute or claim arising out of or in connection with them or their subject matter of formation (including non-contractual disputes or claims) will be governed by English law. Any dispute or claim arising out of or in connection with such contracts or their formation (including non-contractual disputes or claims) will be subject to the non-exclusive jurisdiction of the courts of England and Wales.

**15.7 Third Party Rights**

A person who is not party to these terms and conditions shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.

**15.8 Modification**

15.8.1 We reserve the right to revise and amend these terms and conditions from time to time.

15.8.2 You will be subject to the policies terms and conditions in force at the time that you purchase access to the Digital Content, unless any change to those policies or these terms and conditions is required to be made by law or governmental authority (in which case it will apply to orders previously placed by you), or if we notify you of the change to those policies or these terms and conditions by posting the revised terms on Our Website.

**15.9 No Waiver**

Should we fail to enforce your compliance with these terms, this shall not constitute a waiver of any of our rights under these terms or otherwise.

**16. CONTACTING US**

You may contact us by email: [guidance.research@warwick.ac.uk](mailto:guidance.research@warwick.ac.uk).