

Terms and Conditions Prowise Learn

These conditions apply to all subscription agreements between Prowise UK Limited and its customers regarding the web product Prowise Learn. The conditions are divided into the following sections:

- A. General part
- B. Conditions for Subscribers to PL

If applicable, the specific sections take precedence over the general part. The general part applies to the extent that it is not in conflict with the applicable provisions of any specific section.

Section A. General part

1. Definitions

- 1.1 The terms capitalised in the general conditions have the following meanings:
 - 1.1.1 *Subscription Agreement*: the agreement under which Prowise makes a PL available to a Subscriber free of charge.
 - 1.1.2 *Subscriber*: the legal person with whom Prowise has entered into a Subscription Agreement or who enters into or is in negotiations with Prowise about a Subscription agreement, as well as their representative(s), agent(s), successor(s) in title, and heir(s) and/or beneficiary/ies.
 - 1.1.3 *User*: any person (including but not limited to teachers and children) who the Subscriber enters as Users of PL and who are authorised by Prowise as such to use PL.
 - 1.1.4 *Prowise*: the private limited liability company Prowise UK Limited, having its registered office in Birmingham at (B24 8HZ) Gravelly Industrial Park, Unit 19, Tyburn Road, the United Kingdom.
 - 1.1.5 *PL*: the web application Prowise Learn which Prowise makes available to a Subscriber through a website. This includes any documentation, updates, and other interim additions to PL.
 - 1.1.6 *Counterparty*: the legal person with whom Prowise has entered into an agreement under section B of these conditions. This also refers to the party with which Prowise enters into or is in negotiations about entering into such an agreement, as well as its representative(s), agent(s), successor(s) in title and heir(s) and/or beneficiary/ies.
 - 1.1.7 *"Writing"* in these conditions includes email and fax, to the extent that the identity and integrity of the messages can be sufficiently established.
- 1.2 The version of any communication as received or stored by Prowise shall be its authentic version, barring evidence to the contrary furnished by the Counterparty.

2. Scope

- 2.1 These general conditions apply to every offer, tender and agreement regarding PL between Prowise and a Counterparty to the extent that Prowise or the parties jointly do not depart expressly in writing from these conditions.
- 2.2 These conditions apply equally to agreements regarding PL between Prowise and a Counterparty, for the implementation of which Prowise engages third parties.
- 2.3 If Prowise does not always demand strict compliance with these conditions this shall not mean that its provisions do not apply or that Prowise shall in any way lose the right to require strict compliance with the provisions of these conditions in other cases.
- 2.4 The applicability of the Counterparty's general or other conditions is explicitly excluded.

3. Intellectual property

- 3.1 Prowise remains the owner/rights holder of all the industrial and intellectual property rights supplied in relation to PL and the materials made available by Prowise - and the inventions, drawings, models and copyrighted works contained in them - and software, if and insofar it is not covered by its licensors'/third party's intellectual property rights
- 3.2 To the extent not expressly permitted by Prowise or permitted by law, nothing of any work published by Prowise may be disclosed or duplicated in any manner, which shall include being saved in any computerised file.
- 3.3 Any wilful infringement by a Counterparty of any intellectual property right accruing to Prowise or any of its licensors shall result in a payment obligation immediately due and payable in the amount of £ 25,000.00 per infringement to Prowise, without prejudice to all other claims that shall be due to Prowise because of such actions.
- 3.4 Prowise reserves the right to take those technical measures that it deems necessary to protect its intellectual property.
- 3.5 Such technical security measures may not be circumvented. A Counterparty's willful circumvention of such a measure shall result in a payment obligation immediately due and payable in the amount of £ 50,000.00 per infringement to Prowise, without prejudice to all other claims that shall be due to Prowise because of such actions.
- 3.6 The provisions above do not apply if the Counterparty proves beyond all reasonable doubt that the circumvention was necessary in order to use the software in a manner permitted by law.
- 3.7 Prowise is entitled to make use for other purposes of any knowledge it acquires from implementing an agreement to the extent this does not disclose to third parties any of the Counterparty's strictly confidential information.

4. Force Majeure

- 4.1 Prowise is not obliged to comply with any undertaking to the Counterparty if it is prevented from so doing by a circumstance that cannot be attributed to its fault, nor pursuant to law, a juristic act or for its account according to generally accepted standards.

- 4.2 Prowise can suspend its obligations under the agreement during the time that force majeure continues. If this period is longer than two months, then either party is entitled to dissolve the agreement without obligation to compensate the other.
- 4.3 If at the time that force majeure occurs Prowise has already fulfilled its obligations under the agreement or will fulfil these, and has accrued the fulfilled or to be fulfilled portion of the independent value, Prowise is entitled to invoice separately the accrued fulfilled portion or the to be fulfilled. The Counterparty is obliged to pay this invoice as if issued under a separate agreement.

5. Applicable law and disputes

- 5.1 All legal relationships to which Prowise is party shall be subject solely to the laws of England.
- 5.2 The court in Prowise's place of business, to wit, Birmingham, has exclusive jurisdiction to hear all disputes unless mandatory rules of law require otherwise. Prowise is nonetheless entitled to bring the dispute before the court authorised by law.

6. Source and revision of conditions

- 6.1 Prowise reserves the right to make changes to these conditions. Such changes shall apply also to agreements already concluded with due regard for a term of 30 days after publication of the change by Prowise. Changes of minor importance can be implemented at any time.
- 6.2 If the Counterparty does not wish to accept a change made to these conditions, it may terminate the agreement at any time up to the date on which the new condition comes into effect.
- 6.3 The version in effect at the time the legal relationship with Prowise was concluded applies equally.

Section B. Conditions for Subscribers to PL

7. Effective date and term of subscription

- 7.1 A Subscription Agreement is concluded at the moment that the Subscriber completes an electronic registration in full on the website of Prowise. Upon such registration, the Subscriber and the Users ancillary to it shall obtain access to PL.
- 7.2 Prowise is entitled to reject any application for a Subscription Agreement on reasonable grounds. Prowise shall notify the Subscriber thereof as quickly as possible.
- 7.3 A Subscription Agreement shall be concluded for a fixed term and terminates automatically on 31 December 2019. The Subscriber shall indicate its number of Users.
- 7.4 Before the Subscription Agreement ends Prowise may make the Subscriber an offer to enter into a payable subscription agreement.
- 7.5 Prowise is entitled to cancel the Subscription Agreement at any time without any form of compensation if it deems that the Subscriber has used the Subscriber right contrary to the Subscription Agreement and/or if the Subscriber imputably fails in some other way to meet its obligations, or if Prowise can reasonably assume that the Subscriber will not meet its obligations.

8. User rights

- 8.1 The use of PL is granted solely to the number of Users stated in the Subscription Agreement and by persons who are part of the school or institution stated in the Subscription Agreement.
- 8.2 The Subscriber shall communicate the login details only to the Users authorised to have these and otherwise maintain these as strictly confidential.
- 8.3 The Subscriber shall also use the required care to see that the login details provided by Prowise do not become known in any way to unauthorised third parties. The minimum level of care required for this is that the Subscriber makes clear to its Users that they are not permitted to disclose login details to third parties. The Subscriber is also obliged to lend Prowise all assistance as may reasonably be expected to track and/or sanction Users who do not observe the rules.
- 8.4 The Subscriber and its Users acquire a non-exclusive, non-transferable license for the use of PL. This explicitly does not include permission to disclose PL to third parties and/or to duplicate PL other than for the normal and authorised use of the Subscriber and its Users.
- 8.5 Prowise is entitled to change the content and the presentation of PL at any time as it sees fit. Prowise's goal in so doing shall be to improve the User experience, as it understands it.
- 8.6 The Subscriber is deemed to understand that it must have the computer and peripheral devices and software necessary to make use of PL. Prowise shall inform the Subscriber of the minimum requirements for these.
- 8.7 The Subscriber must refrain from any use of PL that is unlawful or harmful to the interests of Prowise, suppliers, service providers or other Users of PL. Specifically, the Subscriber shall not use PL in a manner that could disconnect, overload, or harm PL or related networks, or that could have a negative effect on the User-experience of any random User of PL.

9. Availability of PL

- 9.1 Prowise shall endeavour to make PL as widely available as possible. Prowise cannot guarantee, however, that there will never be an interruption. When an interruption occurs Prowise will make every effort to remedy it.
- 9.2 Should an interruption result from a problem in the service provision by a telecommunications company (such as Internet providers, hosting companies, and the like) Prowise shall endeavour to induce the telecommunications company to remedy the problem as quickly as possible. As and if necessary, it will switch to another service provider. Prowise cannot, however, be held liable for any situations that may arise in consequence of unforeseen default by telecommunications companies.
- 9.3 Prowise reserves the right to carry out maintenance on PL as result of which these may not be accessible or available temporarily. Prowise shall endeavour to schedule these periods in such a way that as little inconvenience as possible results for the Subscriber and its Users. Nevertheless, it may happen that the Subscriber will have to accept some inconvenience.

10. Warranty

- 10.1 Prowise shall maintain and secure PL carefully as reasonably can be required within the limits of the current state of technology.
- 10.2 Prowise cannot guarantee that the use of PL will not cause any harm to the Subscriber's hardware or software. The risk of third party harmful programmes (such as viruses, Trojan horses, and the like) that are distributed through the Internet beyond Prowise's control or knowledge, cannot be prevented by Prowise. The Subscriber is therefore responsible to maintain an adequate level of security for its hardware and software against the aforesaid risks.
- 10.3 PL is developed and tested with due care. Prowise cannot, however, warrant that PL is entirely free of error or will work without interruption.
- 10.4 PL provides a 'relative' standardisation, in which the performance of the Users is compared against that of other group Users in the same age group (the standard group), provided there are multiple Users in a given age group. The reliability of such standardisation depends on the size and representativeness of the standard group used as a basis for comparison. The standardisation/scores are therefore offered without any guarantee of their accuracy and/or correctness.
- 10.5 Prowise does not warrant that PL meets any goals the Subscriber may have. If the Subscriber draws consequences from the standardisation/scores achieved by its Users, this shall be at the Subscriber's complete and sole risk. The Subscriber indemnifies Prowise against any third party claims (Users included) whereby blame may be attached to Prowise or its suppliers/licensors that the scores give an incorrect picture of a User's abilities and/or performance.

11. Personal data

- 11.1 Prowise processes personal data for the purpose of Subscription Agreements solely in the manner set forth in the Privacy Statement for PL as can be found on the website.
- 11.2 Prowise thereby reserves the right in any case to save IP addresses and to use these to track any infringement of the Subscription Agreement, as well as infringement of intellectual property rights as stated in Article 3 of section A.

12. Liability

- 12.1 If Prowise should be liable for any damage, Prowise limits such damage to the maximum invoice value of the order, or at least of that portion of the order to which such liability is related. Prowise's liability shall be limited in any case to the amount of the payment made by its insurer in such a case. Prowise shall never be liable for consequential damages or loss.
- 12.2 The Subscriber remains entirely responsible for the provision of accurate information and for all possible consequences of providing any incorrect information.

13. Severability

- 13.1 In the event that any provision of these terms and conditions is or becomes invalid, void or otherwise unenforceable, the remaining provisions of these terms and conditions will remain in full force. In that

case, the parties will consult with each other to replace the invalid, void or otherwise unenforceable provision by an enforceable alternative provision. In doing so, the parties will take the utmost account of the purpose and purport of the invalid, annulled or otherwise unenforceable provision.

13. Governing law and competent court

- 13.1 These terms and conditions and all subscription agreements between Prowise and Subscriber regarding PL are governed by the laws of England. Any disputes arising from or in connection therewith shall be brought exclusively before the competent court of England.