

# GLADWELL

# TERMS & CONDITIONS

## Article 1. Definitions

1.1. In this Terms & Conditions, capitalized terms shall be defined as follows:

**Agreement:** the agreement between Gladwell and Client for the provision of Training Services which consists of the Sales Order Confirmation and these Terms & Conditions;

**Intellectual Property Rights:** All intellectual property rights, including but not limited to copyrights, trademark rights, database rights and know-how;

**Participants:** employees of Client that will participate in the Training Services provided by Gladwell;

**Privacy Policy:** the Gladwell privacy policy;

**Sales Order Confirmation:** the confirmation of the purchase of the Training Services specifying inter alia the costs, dates, scope and nature of the Training Services;

**Terms & Conditions:** these terms and conditions as used by Gladwell;

**Training Material:** the material, documentation and information provided by Gladwell by means of the Training Platform or otherwise in relation to the Training Services;

**Training Platform:** the platform made accessible by Gladwell to the Participants as part of the Training Services which contains inter alia training materials and other relevant information;

**Training Services:** the training, study and related services, including but not limited to access to and use of the Training Platform and Training Materials provided by Gladwell to Client on the basis of and in accordance with these Terms & Conditions and the Agreement;

**Website:** Gladwell's website <https://www.gladwellacademy.com> and all underlying webpages.

## Article 2 Applicability of the Terms & Conditions

2.1. These Terms & Conditions apply to the Training Services to be performed by Gladwell for Client as further described in the Sales Order Confirmation.

2.2. In the event one or more terms of the Sales Order Confirmation are in conflict with the terms of this Terms & Conditions, the terms stated in this Terms & Conditions will prevail unless explicitly stated otherwise in the Sales Order Confirmation.

2.3. The relationship of the Parties is that of independent contractors and nothing in the Agreement will be construed so as to constitute the Parties as partners, joint ventures or co-owners or empower either Party to act for, bind or otherwise create or assume any obligation on behalf of the other and neither Party will hold itself out as entitled to do the same, unless expressly

provided otherwise in the Agreement.

2.4. The applicability of any of the Client's purchasing terms and conditions is expressly rejected.

## Article 3 Training Services

3.1. The specifications of the Training Services purchased by Client are described in Sales Order Confirmation.

3.2. Gladwell will perform the Training Services to the best of its ability. All Training Services shall be performed on the basis of an obligation to use best endeavors unless and insofar Gladwell has expressly promised a result in writing.

3.3. Client acknowledges that the content and depth of the Training Services to be provided by Gladwell to Client are determined by Gladwell at its discretion.

3.4. Gladwell, at its own discretion, determines which persons / trainers will provide the Trainings Services.

3.5. Gladwell is entitled to replace the persons/trainers with other persons/trainers with similar skill and knowledge.

3.6. The Client is responsible for the choice and suitability of the Training Services for the Participants. A lack of prior knowledge on the part of the Participants does not affect Client's responsibilities under the Agreement.

3.7. If the training is cancelled, the client shall be notified by email or telephone seven (7) days before the starting date of the Training at the latest.

3.8. When cancellation of the Training Service by Gladwell occurs, Gladwell will offer the Client an alternative date and/or location. If the Client agrees to the alternative, Gladwell will register the new date/dates. The Client will then receive a new confirmation containing the alternative date. If the Client does not accept the alternative offered, the training will be canceled free of charge and will be refunded within two (2) weeks.

3.9. In the event the Client cancels the Training Service, the following costs will be charged:

- for all cancellations a € 175 administration fee will be charged;
- If cancellation occurs between 8-6 weeks before the start of the training, 50% of the subscription price will be charged to the Client;
- If cancellation occurs between 5-3 weeks before the start of the training 75% of the subscription price will be charged to the client;
- If the client cancels within 2 weeks before the training 100% of the subscription price will be charged to the client.

3.10. The cancellation charges do not apply in the event a Participant is replaced by a colleague. Replacement is possible up

until the (first) day of the Training Service. In all other (exceptional) situations, which do not apply to the above conditions, the course of action will be determined by Gladwell.

- 3.11. Client will inform the Participants of the obligations under the Agreement and the rules of conduct and other rules prescribed by Gladwell in relation to the Training Services and shall ensure compliance with these rules and the Agreement.
- 3.12. In the event equipment, software and materials of the Client are used in providing the Training Services, Client ensures the timely availability of properly operating equipment and software.

#### Article 4 Training Platform

- 4.1. In relation to the provision of the Training Services and for the duration of this Agreement, Gladwell offers the Participants access to the Training Platform. Participants will receive a password and log-in in order to access the Training Platform.
- 4.2. For the duration of the Agreement the Client is granted a limited, non-exclusive, non-transferable right to allow the Participants access to and use of the Training Platform in order to participate in the Training Services. This right to access and use of the Training Platform is linked to the specific Participants.
- 4.3. Client and/or Participants may not sell, let, dispose of or grant restricted rights to the (access to the) Training Platform or make these available to third parties in any other way or for any purpose.
- 4.4. Client is fully, independently and solely responsible for all use the Participants makes of the Training Platform.
- 4.5. Gladwell does not guarantee that the Training Platform is free of errors and functions without interruption. Gladwell shall make efforts to fix errors in the Training Platform.

#### Article 5 Payment

- 5.1. The prices and fees pertaining to the Training Services are specified in the Sales Order Confirmation. In the event the scope and/or nature of the Training Services changes during the Agreement, the prices and fees will be amended accordingly.
- 5.2. All prices are in Euros and are exclusive of turnover tax (VAT), fees, duties and other government levies that have been or are later imposed, except where agreed otherwise. Any taxes related to the Training Services provided under the Agreement shall be paid by Client.
- 5.3. Amounts due shall be paid by Client in accordance with the payment terms that have been agreed or that are stated on the invoice. Gladwell may invoice certain amounts in advance and other amounts in arrears. If no specific arrangements have been made, Client shall effect payment within thirty (30) days after the date of invoice or at the day of the Training Services at the latest. Client shall not be entitled to suspend any payments or to offset any amounts due.
- 5.4. If Client fails to pay the amounts due or fails to pay the amounts

due in a timely manner, statutory commercial interest shall be payable by Client on the outstanding amount without a demand or notice of default being required.

- 5.5. If Client still fails to pay the amount owed after receiving a demand or notice of default, Gladwell may refer the debt for collection, in which case Client shall also be obliged to pay all in-court and out-of-court expenses in addition to the total amount due, including all costs charged by external experts.
- 5.6. The relevant documents and information from Gladwell's administration or systems shall be conclusive evidence of the provided Training Services and the amounts payable by Client in return for these Training Services, without prejudice to Client's right to submit evidence to the contrary.
- 5.7. Notwithstanding the above, in the event Client fails to fulfil its payment obligations, Gladwell may also terminate the Agreement and/or suspend the provision of Training Services to Client.

#### Article 6 Term and termination

- 6.1. The Agreement will enter into force on the date it is signed by both Parties and will continue for the duration of the Training Services. Aside from the situations stated in article 3.7 and 3.8 above, the Agreement cannot be terminated early.
- 6.2. Each of the Parties shall be entitled to rescind ("ontbinden") the Agreement if the other party imputably fails to perform material obligations under the Agreement, in all cases after having received a proper written notice of default which is as detailed as possible and in which it has been given a reasonable time period to remedy the breach.
- 6.3. Each of the Parties may partly or completely rescind ("ontbinden") the Agreement in writing with immediate effect and without a notice of default if the other Party is granted a provisional or non-provisional suspension of payments, if a petition for liquidation is filed with regard to the other Party or if the other Party's business is wound up or terminated for other reasons besides a business reconstruction or merger. Gladwell shall never be obliged on account of this termination to refund funds already received or to pay damages.
- 6.4. Gladwell is furthermore entitled to (partially) rescind ("ontbinden") the Agreement in writing with immediate effect, without notice of default and without becoming liable to Client and/or End User in any way, in case of:
  - i. any change of control in Client, its affiliates and/or shareholders;
  - ii. Client's breach of articles 4, 5, 8 and 9.
- 6.5. In the event the Agreement is rescinded no reversal will take place of that which Gladwell has already delivered and/or performed and Client has paid. Where applicable, amounts invoiced by Gladwell before the termination in connection with that which Gladwell has already properly performed or delivered in the implementation of the Agreement will continue to be owed with due observance of the provision in the preceding sentence and will become immediately due

and payable in full at the time of the termination.

- 6.6. In the event the Agreement terminates, for whatever reason, i) Gladwell reserves the right to cease all further delivery of the Training Services hereunder, ii) all rights and licenses granted to Client hereunder will automatically terminate and iii) all outstanding invoices will immediately become due and payable. In the event of termination, Client will also be held to immediately return all Confidential Information, in accordance with article 9.
- 6.7. Any rights or obligations that by their nature are intended to continue in force also after termination - whether by rescinding or otherwise - of the Agreement shall remain in force and effect after termination of this Agreement.

#### Article 7 Privacy

- 7.1. In providing the Training Services, Gladwell will process personal data of Client and the Participants as meant in the European General Data Protection Regulation (EU) 2016/679 ("GDPR"). Gladwell processes this personal data in accordance with its Privacy Policy which can be found at [www.gladwellacademy.com](http://www.gladwellacademy.com). Client guarantees that it has provided the Privacy Policy to the Participants prior to the start of the Training Services.

#### Article 8 Intellectual Property

- 8.1. The Training Material is and will remain the sole and exclusive property of Gladwell and/or its licensors. All Intellectual Property Rights in the Training Material vests in Gladwell's and/or its licensors. Nothing in this Agreement is intended to transfer any Intellectual Property Rights to the Client and/or Participants.
- 8.2. For the duration of the Agreement the Client is granted a limited, non-exclusive, non-transferable right to allow the Participants access to and use of the Training Material as provided by Gladwell through the Training Platform or otherwise, solely for the purpose of participating in the Training Service.
- 8.3. After completion of the Training Services, Client and Participants are allowed to use the Training Materials within the company of Client. Client and/or Participants are explicitly not entitled to sell, rent, copy, publish or otherwise monetize, for instance by using the Training Materials to provide own training services.
- 8.4. Client shall use its reasonable effort to protect Gladwell's and/or its licensor's Intellectual Property Rights in the Training Material and promptly report to Gladwell any infringements of such rights of which Client becomes aware, including by any of its End Users.
- 8.5. The Client shall refrain from any act that infringes the Intellectual Property Rights of Gladwell or its licensors, including – but not limited to – i) the registration of domain names, trademarks or Google Adwords that are identical or similar to any object to which Gladwell or its licensors holds Intel-

lectual Property Rights and/or removing, making illegible, hiding or modifying notifications or statements of Gladwell or its licensors with regard to Intellectual Property Rights.

- 8.6. Third party licenses may form an integral part of the Training Services. If third party licenses are indeed part of the Services, the Client must comply with the terms and conditions provided by the third party. Without accepting these third party licenses, Client is not entitled to use and/or receive the Training Services.
- 8.7. All Intellectual Property Rights of Client and/or Participants, including any Intellectual Property Rights to Client Material shall remain property of Client and/or Participants. Client hereby grants Gladwell a royalty free, unlimited, sub-licensable, non-exclusive license to use the Client Material in relation to the training Services. In the event material provided by Client and/or Participants is used by Gladwell in the Training Material, Gladwell will be entitled to use that material for future training services for other clients, provided that all reference, trademarks and confidential information has been deleted for the provided materials.

#### Article 9 Confidential information

- 9.1. All Training Materials and information disclosed by one party (Disclosing Party) to the other party (Receiving Party) will be presumed to be Confidential Information and will be so regarded by the Receiving Party unless the Disclosing Party can prove that the materials or information are not Confidential Information because:
- it has entered the public domain, except where such entry is the result of the Receiving Party's breach of this Agreement;
  - it is already known to the receiving Party at the time of disclosure by the Disclosing Party;
  - it is received by the Receiving Party properly and lawfully from a third party without restriction on disclosure and without knowledge or reasonable suspicion that the third party's disclosure is in breach of any obligations to the Disclosing Party; or
  - it is required to be (and only to the extent required to be) disclosed pursuant to law or regulation, provided the Receiving Party gives the Disclosing Party reasonable notice of such required disclosure and an opportunity to obtain an appropriate protective order, to the extent permitted by applicable law or regulation.
- 9.2. Parties acknowledge that any Confidential Information disclosed by the Disclosing Party to the Receiving Party is subject to the use for the limited and sole purpose of the execution of this Agreement.
- 9.3. the Receiving Party agrees that it will maintain and preserve the confidentiality of all Confidential Information disclosed to it by the Disclosing Party, including, but without limitation, taking such steps to protect and preserve the confidentiality of the Confidential Information as it takes to preserve and

protect the confidentiality of its own confidential information, but in any event taking no less than a reasonable degree of care.

- 9.4. The Receiving Party furthermore agrees that it will not disclose Confidential Information to any third party without the express written consent of the Disclosing Party and shall subject such third party to at least the same degree as the terms and conditions of this Agreement.
- 9.5. The Receiving Party shall promptly notify the Disclosing Party if it becomes aware of any unauthorized disclosure of the Confidential Information and shall take all measures necessary to prevent any further disclosure and/or use of the unauthorized disclosed Confidential Information.
- 9.6. Upon first request of the Disclosing Party the Receiving Party shall immediately return to the Disclosing Party all Confidential Information, including any copies and/or derived works thereof to and shall immediately cease any and all use of the Confidential Information.

#### **Article 10 Liability**

- 10.1. The following provision set out the entire financial liability of Gladwell (including any liability for the acts or omissions of its employees, agents, licensors and sub-contractors) to Client in respect of any breach of this Agreement howsoever and any representation, misrepresentation (whether innocent or negligent) statement or tortuous act or omission (including without limitation negligence) arising under in connection with the Agreement.
- 10.2. The liability of Gladwell due to attributable failure (“toerekenbare tekortkoming”) to perform the Agreement, an unlawful act (“onrechtmatige daad”) or due to any other cause, will be limited to compensation of the direct loss, for an amount not exceeding the amount actually paid by Client to Gladwell under the Agreement during the preceding twenty-four (24) months. However, the aggregate liability of Gladwell under the Agreement for loss, regardless of the cause, will in no event exceed the total costs of the Training Services for Client.
- 10.3. Gladwell does not accept any liability for special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, loss of business, loss of profit, loss unrealised or anticipated savings, loss of goodwill, loss caused by business interruption, loss of goods, loss of use, loss in connection with claims, materials, services and/or software of third parties, and loss in the form of hiring suppliers.
- 10.4. Gladwell and/or its licensors are not liable, regardless of the cause, for any costs or damage caused by (i) any use of the Training Services by Client and/or Participant ii) (business) decisions made by Client and/or Participants based on the Training Services or (ii) the provision of incorrect or incomplete information by Client.
- 10.5. The exclusions and limitations mentioned in articles 10 do

not apply in the event and to the extent that the loss is due to intent (“opzet”) or gross recklessness (“bewuste roekeloosheid”) on the part of Gladwell or its management.

- 10.6. Any claim for compensation must be directed to Gladwell and lapses by the mere expiration of a period of twelve (12) months after the claim arises. Save where performance has become permanently impossible, liability due to attributable failure to perform the Agreement will only arise if Gladwell has been held in default immediately in writing.
- 10.7. In case of a breach of the Agreement by Client, Gladwell is always entitled to (temporarily) suspend the access to the Training Services.

#### **Article 11 Force majeure**

- 11.1. Gladwell shall not be liable for any delay or failure in performance due to events outside Gladwell’s reasonable control, including without limitation acts of God, terrorism, earthquake, governmental acts, labour disputes, utility failures, illness or unavailability of trainers, shortage of supplies, riots, war, fire, epidemics, or delays of common carriers.

#### **Article 12 Applicable law and jurisdiction**

- 12.1. This Agreement shall be governed by the laws of the Netherlands. The UN Convention on Contracts for the International Sale of Goods (“CISG”) does not apply.
- 12.2. All controversies, disputes or claims arising out of or relating to this Agreement or the breach thereof which shall not have been amicably settled by the Parties shall be exclusively and finally settled by the competent civil court in Amsterdam, the Netherlands.

#### **Article 13 Miscellaneous**

- 13.1. Client shall not be authorized to transfer the Agreement and/or any of its rights and obligations arising out of this Agreement, including the license as granted hereunder to a third party without prior written permission granted by Gladwell.
- 13.2. Gladwell shall have the right to assign all or part of this Agreement to any party affiliated with Gladwell and/or its (sub-)licensors.
- 13.3. In the case of one or more stipulations of this Agreement becoming null or void, Parties shall remain bound by that which remains. That which is null and void or invalid shall be immediately replaced by stipulations which are legally valid and the legal consequences of which, given the content and intention of this Agreement, shall resemble that which they replace as closely as possible.
- 13.4. Additions to and/or deviations from this Agreement shall only apply where agreed in writing between Parties. ■