

GENERAL TERMS AND CONDITIONS OF SALE

The present General Conditions of Sale are up to date on October 1, 2023.

1. - The Parties

The term "Provider" refers to the company Erwan Holley, Micro enterprise, auto-entrepreneur with a capital of 1 000 euros, registered in the Trade and Companies Register of Saint-Brieuc under the number RCS 881141329, and whose head office is located 61 rue de Lyon 75012.

The Provider is a company specialized in concentration learning and content memorization.

The term "Client" means any individual or legal entity that has requested the services of the Service Provider.

The term "Third Party" refers to any individual or legal entity that is not a party to these General Terms and Conditions of Sale (GTCS).

2. - General information

The purpose of these GTCs is to define the rights and obligations of the Parties in connection with the provision of services by the Provider to the Customer in the course of its business.

These General Terms and Conditions of Sale (hereinafter referred to as the "GTC") shall apply to any contract entered into between the Service Provider and the Customer for the provision of services (the "Services") as defined in the quotation validated by the Customer.

The Services may be provided either remotely or at the Customer's premises, at the option of the Provider and the Customer.

The General Terms and Conditions of Sale shall be systematically sent or given to each Customer prior to the placing of any order (the Order). Consequently, the placing of an Order implies the Customer's full and unreserved acceptance of these GTC, to the exclusion of any other documents in the Customer's possession such as brochures, catalogs or advertising leaflets issued by the Service Provider, which shall only have an indicative and non-contractual value.

In the event of a contradiction between the provisions of the quotation and these GTC, the relevant provisions of the quotation shall prevail over the GTC.

These Terms and Conditions shall govern the entire relationship between the Provider and the Customer. No general terms and conditions of purchase shall prevail or be enforced by the Customer against the Provider and no special terms and conditions communicated by the Customer to the Provider shall prevail over the GTCS, unless formally accepted in writing by the Provider.

Any reservation concerning the GTC, put forward by the Customer will be, therefore, in the absence of express acceptance by the Provider, not opposable to the latter, whatever the moment when it could have been brought to its knowledge.

Any provisions derogating from these GTC shall be subject to the express agreement of the Parties, reflected in the Orders confirmed by the Provider or any other document evidencing the agreement of both Parties.

The fact that the Service Provider does not take advantage at a given time of any condition of these GTCs cannot be interpreted as a waiver to take advantage later of any of the said conditions.

The Service Provider reserves the right to modify these T&Cs, the Services and the prices at any time and without prior notice. Such changes shall not affect any Orders in progress.

The GTC apply to professionals only, to the exclusion of consumers. As such, the Customer acknowledges having the quality of a professional, in accordance with the provisions of the applicable Consumer Code.

3. - Definitions

"Order(s)" means the order(s) for the Services issued by an authorized representative of Customer based on Provider's quote.

"Contract": means the contract relating to the performance of the Services, formed by these GTCs, the Orders and the quote expressly referring to the GTCs duly and expressly signed by both Parties.

"Party(ies)" means individually or collectively the Provider and the Customer.

"Services" means the services provided by Provider to Customer as described in the Quote.

4. - Conclusion of the Contract

Unless otherwise agreed in the quotation, the Agreement shall be deemed to have been formed and shall take effect between the Parties on the date of receipt by the Provider of the Customer's Order either by email or by post to the Provider's address.

No change or modification to the Agreement, including but not limited to the characteristics of the Services, shall be considered unless accepted in writing by the Provider.

This provision cannot be replaced by a verbal agreement.

In the absence of specific provisions in the quotation, the time required for the performance of the Services shall be communicated to the Customer as an indication. The time required for the performance of the Services is not guaranteed by the Service Provider and shall not give rise to any liability on the part of the Service Provider, nor shall it give rise to any obligation to pay any compensation or penalty for delay, nor shall it justify the cancellation of the Order in question.

5. - Obligations of the Parties

In general, the Client and the Service Provider agree to cooperate actively in order to ensure the proper performance of the Agreement. Each of the Parties undertakes to communicate any difficulties of which it may be aware as the project progresses, to enable the other Party to take the necessary decisions.

The Customer agrees to provide accurate and truthful information and to notify the Provider of any changes in the information, data and documentation provided.

The Customer will be solely responsible for any malfunctions that may result from incorrect information. The Customer must maintain a valid e-mail address and postal address.

- a) Obligations of the Customer

The Customer expressly declares to have received from the Service Provider all the information and advice necessary for the performance of the Services and waives any liability of the Service Provider as a result.

To enable the Service Provider to carry out its mission, the Client agrees to :

- To collaborate closely with the Provider and to provide all information, documentation, services, and all means useful for the realization of the Services and undertakes to make available to the Provider all elements allowing to satisfy its obligation, including the personnel dedicated to the good realization of the Services.
- Establish detailed specifications that will not be modified, except by agreement of the Parties, once approved by the Provider. If necessary, the Service Provider may intervene in the development of the specifications, jointly with the Client. In the event that any changes involve a substantial reworking of the initial specifications, such changes shall be invoiced in addition to the initial quote.
- Provide the Provider with the quote (dated, signed and stamped).
- To provide all the documentary, graphic and textual elements necessary for the good realization of the Contract (in particular in the good exploitable formats according to the targeted supports), the Customer commits himself to provide all the legal information to be added in the documents and endorses the responsibility to provide the contents of the documents which it edits.
- Have the necessary rights on the elements provided above.
- Actively collaborate in the success of the project by providing the Service Provider with all the information and documents necessary for the proper understanding of the needs and the proper execution of the Services within the previously defined deadlines.
- Strictly comply with the technical recommendations and artistic suggestions made by the Provider.
- Guarantee the Provider against any action that could be brought against it because of the character of the data or information (texts, images, sounds) that would have been provided or chosen by the Customer.
- To pay within the time limits defined in the estimate and in the present GTC, the sums due to the Provider.
- Inform the Provider of a possible competition with other providers.
- Ensure that all necessary means are made available to allow the Provider to perform the Services on its premises and/or remotely.

Prior to each intervention of the Service Provider, the Customer agrees to perform all necessary backup procedures to protect and safeguard its data, programs and computer files.

Finally, the Customer is solely responsible for the laws and regulations applicable to the Services, in particular with regard to the protection of intellectual property rights, legal notices, personal data protection, protection of minors (if applicable) and consumer law (if applicable).

b) Obligations of the Provider

In the context of these GTCs and the provision of the Services, the Provider undertakes to use all necessary means and to make every effort to carry out its mission in accordance with the rules of the art. This obligation does not constitute an obligation of result, the Provider providing the Services only within the framework of an obligation of means.

- The Provider guarantees that the creations are legally available and are not encumbered by third party rights for the uses provided for under the Contract.
- The Service Provider undertakes to inform the Customer on a regular basis of the progress of the project, in particular through validations submitted to the Customer in the backward planning as provided in the quotation.

6. - Terms of Performance of Services and Delivery of Deliverables

The Customer agrees to provide the Service Provider with all documents necessary to perform the Services entrusted to the Service Provider in a usable form.

Any subsequent modification or additional request requested by the Customer will be subject to additional billing.

As the performance of the Services entrusted to the Service Provider depends directly on the Customer's compliance with its own obligations, the Parties expressly acknowledge that the delivery times specified in the quotation are given for information purposes only and without guarantee.

A delay on the indicated deadlines cannot give rise to the payment of damages, nor authorize the Customer to terminate the Contract or to refuse the delivery of the Services.

7. - Price

Provider's pricing terms for the provision of the Services are set forth in Provider's quotation.

Prices are given as an indication and are therefore subject to change. The price invoiced is the one specified in the Order validated by the Provider.

The prices of the Services are expressed and payable in Euros and are exclusive of value added tax and any other tax, the Customer being responsible for the payment of said taxes.

The prices of the Services do not include any travel or accommodation expenses that may be charged in addition by the Provider to the Customer according to the terms and conditions indicated in the quotation.

8. - Terms of payment

Acceptance of the quotation and the resulting Customer Order must be accompanied by payment of a deposit as specified in the quotation.

The payment of the deposit will condition the implementation of the Services. Payment of the deposit may be made by check, wire transfer, or direct debit to the order of the Provider.

Payment of the balance of the Services must be made within thirty (30) days from the date of the invoice issued by the Provider and may be made by check, wire transfer, or direct debit to the order of the Provider.

There is no discount for early payment.

9. - Late fees

In case of non-payment on the due date, any sum due will incur late payment penalties. These penalties shall run from the day following the due date shown on the invoice until the day of effective and full payment of the sum. The rate of late payment penalties is set at three times the legal interest rate in force.

These late payment penalties shall be payable by operation of law and without the need for a reminder from the Provider.

The Customer shall also be liable to pay a fixed minimum collection fee of forty (40) euros of the sums owed by the Customer to the Service Provider.

Finally, in the event of late payment, the Service Provider reserves the right to suspend or postpone the performance of the Services provided for in the Order for which payment is overdue.

10. - Ancillary Fees

The following are to be invoiced in addition: modifications requested by the customer during the course of the project, if they involve a reworking of the project.

11. - Cancellation

The Service Provider may terminate the Services provided to the Customer in the event of a breach by the Customer of its obligations under the Agreement, which is not remedied within fifteen (15) days of the Service Provider's notification of such breach by registered letter with acknowledgment of receipt, irrespective of the Service Provider's right to claim damages.

The Service Provider may also terminate the Agreement in the event of non-payment of the invoice(s) outstanding by the Customer.

In the event of termination of the Agreement by the Customer before its term, the Customer formally undertakes to settle and pay the amounts relating to the current schedule, to the items completed or in progress, as well as to the additional services performed. The files and source data created and used by the Provider cannot be claimed by the Customer without a financial contribution. The deposit already paid shall be retained by the Provider as compensation for the work undertaken.

12. - Intellectual Property

The software, data, documentation, processes, methodologies, technologies and documents belonging to the Provider (hereinafter referred to as Intellectual Property Rights) used in the implementation of the Services shall remain the exclusive property of the Provider.

The Service Provider grants to the Customer, where applicable and to the extent strictly necessary for

the performance of the Services, on a personal, non-exclusive and non-transferable basis, the right to use such Intellectual Property Rights for the duration of the performance of the Services.

The works created by the Service Provider for the Customer in the performance of the Agreement shall remain the full and exclusive property of the Service Provider until the invoices issued by the Service Provider are fully paid by the Customer.

Upon receipt of the invoices by the Provider, the Provider assigns to the Customer all intellectual property rights on the works created specifically and at the request of the Customer, within the framework of the execution of the Agreement, for their duration of protection and for the whole world.

In particular, the Service Provider assigns to the Customer the following rights:

The reproduction right includes, but is not limited to

- the right to reproduce and/or have reproduced the works created in unlimited number, by any process and on any current or future support, and named graphic, magnetic, digital or electronic (interactive or not);
- the right to put into circulation and to exploit the created works, commercially or not, the reproductions thus realized, in unlimited number, for free or for a fee, and this whatever the destination.

The right of representation includes, but is not limited to:

- the right to distribute and communicate to any public the elements, supports, components of the created works, by any process of representation known or unknown to this day, for any use whatsoever;
- the broadcasting of the works created by any means, in particular by hertzian, cable-satellite way as well as by any network, and more generally by any means of transmission of data digitized or not.

As part of the provision of the Services and as necessary, the Customer also grants the Provider a right to use its software, data and documents, on a personal basis, free of charge, non-exclusive and non-transferable for the duration of the Services.

The Customer agrees to obtain from any third party, if necessary, the right to grant to the Service Provider the rights to use the software, data and equipment belonging to such third party for the purpose of providing the Services.

Trademarks and company names

Any use by the Customer of the corporate names, trademarks and distinctive signs belonging to the Service Provider is strictly prohibited unless the Service Provider has given its express prior consent. In case of prior express agreement of the Provider, the Provider grants the Customer a strictly personal, non-exclusive and non-transferable right to use the Provider's company names, trademarks and distinctive signs, worldwide and for the entire term of the Agreement.

The Service Provider is authorized to use the Customer's company name/brand in the course of its activities for commercial promotion purposes.

The Service Provider also reserves the right to mention the achievements made for the Customer on its external communication documents, advertising (website, portfolio, etc.) and during canvassing for business.

Warranty of eviction

The Service Provider shall indemnify the Customer against any action, claim, demand or opposition from any person claiming an intellectual property right infringed by the provision of the Services, provided that the Customer shall inform the Service Provider, as soon as it becomes aware of any such claim, demand or proceeding made or brought on such grounds, whether in or out of court. The Customer agrees to provide the Service Provider with all documents and information in its possession as well as any assistance required for its defense.

In the event of proven infringement of a third party's rights, the Service Provider may, at its option:

- obtain any license or authorization to allow Customer to continue to use the Services;
- provide an alternative solution that allows Customer to use the Services in accordance with the Order;
- if neither of these options is feasible, refund the Customer the amounts paid for the Services, less the amounts already paid by the Customer for the period of actual use of the Services.

The Service Provider shall have no obligation to indemnify or otherwise satisfy any claim of infringement arising out of (a) any use of the Services other than in accordance with the Agreement, (b) any combination of the Services with other services or materials not provided by the Service Provider.

With respect to any software, data or documents used by the Service Provider in connection with the provision of the Services, which the Customer has acquired the rights to use from third parties or which it owns, the Customer shall indemnify the Service Provider against any consequences or consequential damages that the Service Provider may suffer as a result of the use of such software, data or documents against any action by a person claiming an intellectual property right or relying on a claim of unfair competition and/or parasitism on such software, data or documents.

13. - Guarantees

The Provider warrants that the Services are provided in substantial compliance with the Order.

Unless otherwise provided by law, all other warranties, express or implied, are excluded.

The Service Provider shall not be liable for any warranty, in particular if the Customer has modified or caused to be modified the Services or has used other services than the Services provided by the Service Provider, without the Service Provider's prior written consent or if the Customer or third parties have intervened on the elements of the Services without the Service Provider's prior consent.

14. - Responsibilities

The Provider's liability shall be limited to direct damages resulting from a defect in the Services or breach of the Agreement, even if the defect in question was foreseeable at the time of the Order.

In no event shall the Provider be liable for any indirect, incidental or special damages as defined by the case law of the French courts, including, without limitation, the cost of procurement of substitute services, loss of profits, loss of data or downtime, whether in contract or tort and whether or not arising out of the use or operation of the Services, even if the Provider has advised the Customer of the possibility of such damages.

In the event of any failure by the Service Provider to perform its obligations (failure to perform or improper performance), the Customer shall notify the Service Provider within eight (8) business days after the failure is discovered by registered letter with return receipt. Failure to do so shall render the breach unenforceable against the Service Provider.

In the event that the Customer has signed an acceptance report for the Services and/or the artwork of the creation(s) or has validated the acceptance of the Services and/or the artwork, by any means and in particular by the use of the Services and/or the artwork, the Service Provider shall be deemed to have performed its obligations in accordance with the Agreement. The Customer shall then be deemed to have irrevocably waived all claims in this respect.

In addition, the Provider shall not be liable for non-performance of the Agreement in the event of force majeure as defined in Article 15, and in the event of damage caused by a third party or attributable to misuse or non-conforming use by the Customer of the Services, in violation of the Provider's instructions or the rules of the trade.

Except for personal injury or death, and except in the case of gross negligence or intentional misconduct causing proven direct damage or in the case of a breach of an essential obligation of the Agreement which renders the Agreement meaningless, the Client acknowledges that the liability of the Service Provider is limited to the amount paid for the relevant Services.

15. - Force Majeure

The Parties shall not be held liable or in breach of their contractual obligations when the failure to perform their respective obligations is due to force majeure as defined by the case law of the French courts. The Contract between the parties shall be suspended until the extinction of the causes having generated the force majeure. Force majeure takes into account irresistible facts or circumstances, external to the parties, unforeseeable and independent of the will of the parties, despite all reasonably possible efforts to prevent them.

The Party affected by an event of force majeure shall notify the other Party within five (5) working days following the date on which it becomes aware of the event. The two Parties shall then agree on the conditions under which the performance of the Contract shall be continued.

16. - Concealed work

The Service Provider declares that it is registered with the RCS, as well as with the URSSAF, and that its registrations expressly cover all its activities for the performance of the Services defined in the Quotation and/or the Order.

In compliance with Articles L 8221-1 et seq. of the French Labor Code and in accordance with Article D 8222-5 of the same code, the Service Provider undertakes to provide the Customer with the following documents upon conclusion of the Contract, and every six months until the end of its performance

- A copy of the tax notice for the business tax,
- A Kbis extract attesting to the registration in the trade and company register,
- A certificate on honor established by the Provider, certifying that the work is performed by employees regularly employed with regard to Articles D.8222-5, D.8222-7 and D.8222-8 of the Labor Code.

17. - Insurance

Each of the Parties undertakes to maintain in force, for the entire duration of the Contract, with a solvent insurance company, an insurance policy guaranteeing damage that may occur to its property and personnel, as well as a policy covering its professional liability, so as to cover the financial consequences of bodily injury, property damage and consequential loss for which it would be liable, caused by any event and which would be the act of its employees and/or partner companies during the execution of the Contract.

18. - Privacy Policy

Each Party undertakes, both on its own behalf and on behalf of its employees and partner companies, to preserve the confidentiality of the confidential information exchanged (the "Confidential Information"). Confidential Information shall mean all information, regardless of its nature, form or medium, to which each Party has access in the performance of the Agreement, including, without limitation, all resources made available by the Service Provider to the Customer and by the Customer to the Service Provider, any technical, industrial, financial or commercial data, or any other information and documents relating to the activities of each Party. Confidential Information does not cover documents, data or other information that are:

- known by either Party on a non-confidential basis prior to disclosure by the other Party;
- that have fallen or will fall into the public domain on the day of their disclosure;
- legitimately obtained from a third party not bound by an obligation of confidentiality;
- independently developed by the Receiving Party who did not have access to any information from the Disclosing Party;
- disclosed under a statutory or regulatory provision.

Each Party agrees:

- to apply the same safeguards to Confidential Information as it applies to its own confidential information;
- to communicate the Confidential Information only to its employees and collaborators brought to know them within the framework of the realization of the Services;
- not to disclose, publish or transmit to third parties the Confidential Information, in any form whatsoever, without the prior written consent of the other Party;
- to use the Confidential Information only for the purpose of performing the Services.

19. - Non-solicitation

Each of the Parties waives, except by prior written agreement, the right to directly or indirectly make offers of employment to any employee of the other Party who has worked on the Services, subject of this Agreement, or to take such employee into its service, under any status whatsoever. This waiver is valid for a period of two (2) years from the end of this Agreement.

20. - Personal data

In accordance with the provisions of the French Data Protection Act No. 78-17 of January 6, 1978, as amended, the Customer is the data controller for the performance of the Contract.

The Service Provider acts in the name and on behalf of the Customer in the processing of the personal data communicated to it by the Customer and is therefore a subcontractor.

In this respect, the Provider undertakes to take the necessary measures to ensure the protection, security and confidentiality of personal data transmitted to it by the Customer.

In accordance with the provisions of the General Data Protection Regulation (RGPD) that came into force on May 25, 2018, the Customer has, in particular, a right of access, rectification, opposition and portability of his personal data. The guarantee of these rights is affirmed within the privacy policy that accompanies the present, and which consequently form a contractual whole.

21. - Changes to the GTCs - Assignment of the Contract

The Service Provider may decide to assign or transfer its rights or obligations under this Agreement provided that the Customer receives the Services under the same conditions.

The Service Provider reserves the right to modify these Cs&T and to notify the Customer. If a material change in the terms of the GTC is not acceptable to the Customer, the Customer shall have a period of fifteen (15) days from the date of notification by the Provider of the changes to inform the Provider. If the Parties do not agree on the changes, the Parties may terminate the Agreement.

At the end of this fifteen (15) day period, the modifications to the GTC will be definitively considered as accepted by the Customer.

22. - Applicable law and jurisdiction

The law of the Contract shall be French law. The parties expressly agree that the Vienna Convention on the International Sale of Goods dated April 11, 1980 shall not apply to the Contract.

In the event of a dispute between the Parties, they shall attempt to find an amicable solution to the dispute within thirty days of the notification of the dispute by the requesting Party to the other Party by registered letter with acknowledgement of receipt.

In the absence of an amicable solution between the Parties, the courts of the jurisdiction of the Court of Appeal of Paris shall have exclusive jurisdiction to hear any dispute of any nature whatsoever or any dispute relating to the interpretation or performance of this Agreement, notwithstanding multiple defendants, incidental or summary proceedings or warranty claims, unless the Service Provider prefers to bring the matter before any other competent court.

23. - Refusal

The Service Provider reserves the right not to accept an Order from the Customer where the Service Provider has previously encountered payment problems (non-payment or late payment) with the Customer for one or more previous Orders.

24. - Subcontracting

The Provider may subcontract all or part of the performance of the Services to subcontractors. In this case, the Provider remains responsible for the performance of the Services to the Customer.

25. - General provisions

Previous documents or other agreements

The Agreement supersedes any prior document, any other written or verbal agreement relating to the same subject matter, with the exception of the quotation, the Order and prevails over any provision to the contrary that may be contained in documents issued by the Customer.

Autonomy of clauses

If any provision of these GTC or its application to any person or circumstance is held invalid, such invalidity shall not affect the remaining provisions or applications of these GTC, which shall remain in full force and effect, separate from the provision held invalid. To this end, the provisions of these GTC are hereby declared to stand alone.

Notification

Any notification shall be made in writing and shall either be delivered by hand, sent by registered letter with acknowledgement of receipt, or made by extra-judicial document to the address indicated in the order.

Language of the Contract

The Contract is written in French. A foreign language translation may be provided for information purposes. In case of contradiction, only the French version shall be binding between the Parties.

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