

## TERMS AND CONDITIONS OF USE FOR WALLED GARDEN

### 1. Use of the Walled Garden

- 1.1. These terms and conditions (“**Terms**”) govern your use of this website operated by the Supplier (<https://www.walled-garden.com>) (“**Walled Garden**”). All purchases made via the Walled Garden, including any publications or materials (“**Products**”) and all services, including any candidate registrations, result entry, examination entry, report generations and registration and booking for end point assessment (“**Services**”) shall be subject to these Terms.
- 1.2. Please read these Terms carefully. If we accept your order, our agreement will be made on these Terms. By accepting these Terms, you confirm that you have read and understood these Terms and agree to them. If you do not agree, you must not continue to use the Walled Garden.
- 1.3. You must only access Walled Garden if you are an “Authorised User” meaning that you are an employee or officer of an organisation of either:
  - 1.3.1. a centre approved by the Supplier to offer the Supplier qualifications or an organisation approved by the Supplier to use Walled Garden for any other purpose (“**Customer**”); and you have permission from the Customer to use the Walled Garden to order Products and/or Services on behalf of the Customer; or
  - 1.3.2. you are an employee or officer allocated an individual user name and password by the Supplier.
- 1.4. These Terms apply to you as an Authorised User and to the Customer of which you are an employee or officer, and in agreeing to these Terms and by ordering any Products or Services through the Walled Garden, you acknowledge and warrant that you have authority to bind that Customer.
- 1.5. The Supplier may vary these Terms from time to time at its discretion. The version of these Terms posted on the Walled Garden at the time you place your order shall apply. The relationship between the Supplier and the Customer may be subject to separate terms, including those set out in any applicable centre contract or end point assessment guide and qualification approval (as amended from time to time) in respect of providing the Supplier qualifications or end point assessment. In the event of any conflict or inconsistency between these Terms and any other terms in relation to your use of Walled Garden these Terms shall apply.
- 1.6. For the avoidance of doubt these Terms shall override any other terms stipulated, incorporated or referred to by the Customer, whether in any order or during any negotiations or any course of dealing established between you and the Supplier, and constitute the entire understanding between you and the Supplier in relation to orders for Products and/or Services made through the Walled Garden.
- 1.7. An order from a Customer shall constitute an offer to purchase Products or Services, which the Supplier may accept or decline at its sole discretion.
- 1.8. Any reference to “**Supplier, we, our, us or**” in these Terms shall mean:
  - 1.8.1. The City and Guilds of London Institute whose principal place of business is at 1 Giltspur Street, London, EC1A 9DD;
  - 1.8.2. City and Guilds International Limited whose registered office is at 1 Giltspur Street, London, EC1A 9DD; and
  - 1.8.3. any other company which is a subsidiary company of The City and Guilds of London Institute (“subsidiary company” having the meaning in section 1159 of the Companies Act 2006, as amended) which may receive orders via Walled Garden and/or grant the necessary permissions to the Customer’s and Authorised Users to place such orders from time to time.

### 2. Usernames and passwords

- 2.1. User names and passwords are personal to each Authorised User and access is restricted to the named individual whose details have been registered with the Supplier. Authorised Users shall not permit their user name and password to be used by or disclosed to any other third party.
- 2.2. In the event that either the Authorised User or the Customer has any reason to believe that the individual user name and password may have been lost, disclosed or used by a third party, you must contact us immediately. In addition, if there are any changes to the information supplied on registration or in the event that an Authorised User leaves the employment or service of the Customer or if it is no longer appropriate for an Authorised User to have access to and use of Walled Garden the Authorised User or Customer (as applicable) must update the relevant information on the Walled Garden or remove the relevant Authorised User account (as applicable).
- 2.3. If the Customer or Authorised User is unable edit to update the information on Walled Garden or remove the relevant Authorised User account, the Authorised User or Customer (as applicable) must contact the Supplier On-Line Services Department by sending an e-mail to on-line@cityandguilds.com or by writing to The City and Guilds of London Institute, 1 Giltspur Street, London EC1A 9DD. The Supplier will revoke the permissions of the relevant Authorised User to access Walled Garden as soon as reasonably possible after receipt of such notification. The Supplier shall not be liable for any loss or damage suffered by the Customer prior to withdrawing access following receipt of notice or as a result of any breach of the requirements by the Customer or the Authorised User as set out in this clause 2.
- 2.4. Subject to clause 3, if the Supplier suspects that any Authorised User is misusing the Walled Garden or an Authorised User has not accessed Walled Garden for a period of 12 months or more, that Authorised User's access may be suspended at any time at the sole discretion of the Supplier.

### **3. Term**

- 3.1. The Terms will take effect on the date that the Authorised User first accepts the Terms and accesses Walled Garden and shall continue until terminated:
  - 3.1.1. by either the Supplier or Customer giving not less than one week's notice to the other;
  - 3.1.2. immediately without notice if the Supplier withdraws permission for a Customer to offer the Supplier qualifications;
  - 3.1.3. immediately without notice by the Supplier if the Authorised User ceases to be authorised by the Supplier to use Walled Garden; or
  - 3.1.4. immediately without notice by the Supplier if the Authorised User ceases to be authorised by the Customer to use Walled Garden; whichever is the earlier.
- 3.2. The Supplier may grant and withdraw the approval of a centre as a Customer and the authorisation of an Authorised User at its discretion.
- 3.3. The rights and obligations of the parties in relation to the security of data shall survive termination of this agreement.

### **4. Prices**

- 4.1. Prices quoted exclude United Kingdom Value Added Tax, or any other applicable tax. The Customer shall pay any Value Added Tax that may be payable to the Supplier or any other applicable local tax that should be applied in the country where the Customer is established at the applicable rate.
- 4.2. Unless expressly specified otherwise, all prices displayed on Walled Garden are quoted in pounds sterling and all invoices and remittances shall be in the same currency.
- 4.3. The Supplier may charge carriage and handling charges (if any) at the rates from time to time indicated in the Supplier's publications lists or as displayed on Walled Garden. Carriage and

handling charges for international deliveries may vary from the rates applicable for Customers within the United Kingdom.

- 4.4. Whilst every effort is made to ensure the accuracy of the prices quoted on Walled Garden, the Supplier reserves the right to make changes without prior notice at any time.

## 5. Orders

- 5.1. You warrant and represent that all information provided by you, as Authorised User is, when given, and will be at the time that any order is placed, true, accurate and complete. All orders must be accompanied by both the postal and site address for delivery.
- 5.2. The Supplier reserves the right to decline to carry on business with any Customer or any individual employed or engaged by any Customer (whether or not an Authorised User).
- 5.3. Notwithstanding any other provisions in these Terms, the Supplier may decline to accept, or cancel, any order, whether or not payment has been received, by giving notice of non-acceptance or cancellation to the Authorised User and/or the Customer.
- 5.4. The Supplier will provide notices of decline or cancellation pursuant to clause 5.3 within ten **Working Days** (hereinafter meaning a day on which the Supplier is open for business in London, excluding week-ends and public holidays) of receipt by the Supplier of the order.
- 5.5. If the Supplier declines to accept or cancels an order, for which it has received payment, it shall issue a credit note for the full amount of the payment but shall have no further or other liabilities.
- 5.6. The Supplier executes orders to the Customer's exact requirements, and does not substitute one Product or Service for another unless instructed to do so, or unless the Product or Service has been superseded. Subject to stock availability, the Customer may place orders for any quantity of Products.
- 5.7. All descriptions, illustrations and indications of Products or Services provided or contained in the Walled Garden are intended merely to present a general idea of the Products or Services being described and unless and until an order is accepted by the Supplier, nothing contained in any such descriptions shall form part of these Terms.
- 5.8. An Authorised User and/or a Customer shall have no right to cancel the whole or part of an order once accepted by the Supplier without the specific written agreement of the Supplier (to be at the sole discretion of the Supplier) and on the basis that the Customer indemnifies the Supplier against any expense, wasted costs, loss or damage incurred as a result of the cancellation or part cancellation of any order. In the event of part cancellation, the Supplier reserves the right to charge the Customer for any service costs incurred and (if appropriate) for any difference in the selling price of the appropriate quantity of the Product or Service dispatched up to the time of cancellation.
- 5.9. If the Supplier is hindered or prevented from performing its obligations under these Terms (including any orders for Products accepted by the Supplier or any of the Services made available via Walled Garden) for any cause beyond its reasonable control, or by reason of its inability to procure services, materials or articles required for the performance of any such obligations except at increased prices, the Supplier may at its sole option delay the performance of, or cancel the whole or any part of any order, and the Supplier shall not be held responsible for its delay or cancellation or any inability to deliver.

## 6. Licensed Products

- 6.1. Where an Authorised User is purchasing a licence to use Supplier licensed Products, the Authorised User, on behalf of the Customer, accepts specific licence terms for an individual Product when purchasing that Product via Walled Garden. Those specific licence terms shall form clause 6.3 of these Terms.

## 7. Delivery of Products

- 7.1. While the Supplier endeavours to dispatch the Products to the Customer within 10 Working Days of receipt of the order, any dispatch or delivery periods quoted are estimates only and the Supplier shall not be held responsible for any delay of or inability to deliver any orders within any quoted timescales. Dispatch or delivery periods for international deliveries may vary from the times applicable for dispatch or deliveries to Customers within the United Kingdom.
- 7.2. Delivery will only be made to Customer's address as registered on Walled Garden or to such other address as the Customer may notify to the Supplier in writing from time to time (for specific Products and Services).
- 7.3. Delivery to Approved Centres outside the UK will be made using the most cost-efficient method as determined by the Supplier in its discretion. The Supplier is responsible for any local charges, including but not limited to customs and clearance charges and all such applicable charges shall be payable by the Customer but reserves the right pass these charges onto Approved Centres as its discretion
- 7.4. Risk of loss or of damage for electronic Products shall pass to the Customer at the time of purchase.
- 7.5. Customers must inspect the Products as soon as is reasonably practicable after delivery.
- 7.6. If upon inspection the Customer discovers any discrepancy between the type of Products ordered and those delivered, any damage or any defects in the Products (which is or should be apparent from such inspection), the Customer shall notify the Supplier in writing of any such discrepancy, damage or defect within 110 Working Days of the date of receipt of the Products. Any notice given pursuant to this clause 6.6 shall include as much detail as possible about the claimed discrepancy, damage or defects.
- 7.7. The Customer shall be deemed to have accepted the Products if the Supplier is not notified of any such discrepancy, damage or defects within 10 Working Days from the date that the Products are delivered to the Customer.
- 7.8. The Customer acknowledges that it is its sole responsibility to check (by the application of appropriate diagnostic software) for the presence of computer viruses in software comprised in Products before the Products are used or disposed of.
- 7.9. If the Customer establishes to the Supplier reasonable satisfaction that between the type of Products ordered and those delivered or any Products are damaged or defective, the sole remedy shall be limited (as the Supplier may elect) to:
  - 7.9.1. the replacement of such Products; or
  - 7.9.2. refund of the purchase price of such Products; or
  - 7.9.3. where sums are owed by the Customer to the Supplier, the issue of a credit note on return of the defective Products provided always that this clause will not apply if the Supplier subsequently finds to its reasonable satisfaction that any such damage or defects have been caused by accident or any act or omission of the Customer, including misuse or inappropriate storage.
- 7.10. Any queries regarding shortages of Products should be made in writing by reference to the relevant dispatch advice note and within 10 Working Days of the date of delivery. All such written queries should include a copy of the relevant dispatch note.
- 7.11. All queries regarding Products invoiced but not delivered must be made within 10 Working Days of the relevant invoice date and the invoice number must be quoted.
- 7.12. In the case of a part delivery all queries must be made within 10 Working Days of receipt of the part delivery and the relevant invoice number or order reference must be quoted.

**8. Deliver of Examination Papers**

- 8.1. The Supplier aims to dispatch the Products to the Customer within 10 Working Days of receipt of the order, any dispatch or delivery periods quoted are estimates only and the Supplier shall not be held responsible for any delay of or inability to deliver any orders within any quoted timescales.
- 8.2. Dispatch or delivery periods for international deliveries may vary from the times applicable for dispatch or deliveries to Customers within the United Kingdom.
- 8.3. Delivery will only be made to the Customer's address as registered on Walled Garden.
- 8.4. Delivery to Customers outside the UK will be made using the most cost-efficient method as determined by the Supplier in its discretion. The Supplier is responsible for any local charges, including but not limited to customs and clearance charges and all such applicable charges shall be payable by Customer but reserves the right pass these charges onto Customers as its discretion.
- 8.5. In the case of the delivery of paper examination papers, the Customer shall as soon as is reasonably practicable after delivery inspect the details visible through the cover window of the papers and shall notify the Supplier immediately of any defect.
- 8.6. Any queries regarding shortages of Products should be made in writing by reference to the relevant dispatch advice note and within 10 Working Days of the date of delivery. All such written queries should include a copy of the relevant dispatch note.
- 8.7. Title and all rights in examination materials including but not limited to assessments for examinations, phased tests and/or the Supplier prescribed assignments are and shall remain vested in the Supplier at all times. The Customer hereby agrees to abide by the regulations as from time to time provided by the Supplier in relation to such examination materials.

**9. Payment**

- 9.1. The Customer shall settle all invoices within 30 days of invoice date unless otherwise agreed in writing between the Supplier and Customer.
- 9.2. The Customer shall make all payments in full without any set-off, deduction or counterclaim.
- 9.3. The Supplier's preferred method of payment is direct debit.
- 9.4. Customers within the United Kingdom and Ireland only may pay through the BACS payment system to the appropriate bank account, as set out on Walled Garden.

<b>City &amp; Guilds</b> Royal Bank of Scotland plc London City Office 62/63 Threadneedle Street London EC2R 8LA Sort Code: 15-10-00 Account No: 11656512	<b>City &amp; Guilds International</b> Royal Bank of Scotland plc London City Office 62/63 Threadneedle Street London EC2R 8LA Sort Code: 15-10-00 Account No: 16588280
---	---

- 9.5. Cheques must be made out to the appropriate recipient in accordance with the invoice.
- 9.6. Title in the Products shall not pass to the Customer until all sums due or owing to the Supplier by the Customer on any account have been paid, and, until payment, the following provisions of this clause shall apply.
- 9.7. If the Customer defaults in the punctual payment of any sum owing to the Supplier, the Supplier shall be entitled to the immediate return of all Products sold by the Supplier to the Customer in which title to the property has not passed to the Customer in accordance with these Terms.

9.8. The Customer irrevocably authorises the Supplier and its employees and agents to recover the Products and to enter any premises of the Customer for that purpose. Demand for or recovery of the Products by the Supplier shall not of itself discharge either the Customer's liability to pay the whole of the price and take delivery of the Products or the Supplier' right to sue for the whole of the price.

## **10. Warranty**

10.1. As long as the Customer complies with the requirements to inspect the Products on delivery as set out in clause 7 and the requirements in clauses 8.2 and 8.3, the Supplier warrants that where defects appear in Products supplied owing to faulty design, materials, or workmanship, the Supplier will at its option:

10.1.1. replace or repair them; or

10.1.2. refund the purchase price provided always that this clause will not apply if the Supplier subsequently finds to its reasonable satisfaction that any such defects have been caused by accident or any act or omission of the Customer, including misuse or inappropriate storage.

10.2. All claims relating to latent defects, which appear after the initial inspection of Products on delivery, must be made in writing to the Supplier within three months of dispatch, or such other period as may be indicated by the Supplier for specific Products from time to time.

10.3. All Products or parts to which a latent defects claim relates must be returned to the Supplier within three months of dispatch, suitably packaged and carriage-paid and, where relevant, in accordance with any particular instructions that the Supplier may have notified to the Customer at the time of supply.

10.4. Returned Products or parts of Products must be accompanied by an advice note stating the original invoice number in respect of these Products and the nature of any claimed defect, together with such further information as the Supplier may at the time of supply have stipulated.

10.5. The warranty in this clause shall be in lieu of and to the exclusion of any other warranties or conditions implied by law as to the quality or fitness for any particular purpose of the Products and Services except to the extent that such warranty cannot be excluded.

## **11. Liability**

11.1. These Terms set out the Supplier' entire liability in respect of the Products and Services.

11.2. Except as provided in these Terms the Supplier shall not be liable, whether in contract, tort or otherwise, in respect of defects in the Products or Services or failure to correspond to specification or sample or for any injury, damage or loss resulting from such defects or failure.

11.3. In no event shall any breach of contract on the part of the Supplier or tort (including negligence) or failure of any kind on the part of the Supplier or that of its employees, agents or sub-contractors give rise to any liability for loss of revenue or any consequential or indirect loss or damage arising from any cause whatever.

11.4. The Supplier' liability (if any) whether in contract, tort or otherwise in respect of any defect in the Products or Services or of any obligation owed to the Customer under or in connection with these Terms shall be further limited in the aggregate to the repayment of the amount paid by the Customer for the Products or Services in question.

11.5. Without prejudice to the generality of clauses 11.1 – 11.4, the Supplier excludes all liability for any loss or damage resulting from any attempted submissions through Walled Garden that have not been entered and processed in accordance with the instructions in Walled Garden or any submissions that have been entered incorrectly. It is your responsibility, as the Authorised User employed or engaged by the Customer, to ensure that all data transferred electronically from the

Customer and submitted to the Supplier via Walled Garden, which shall include but not be limited to details of individual candidates (“**Message(s)**”) have been processed through Walled Garden and the information contained therein is fully complete and accurate. In order to check that all Messages that are submitted have been processed, you must check the Order Reports (to be found on Walled Garden) or similar functional report for each Message submission attempted by you.

- 11.6. Nothing above or in these Terms serves to limit any liability which cannot by applicable law be excluded or limited, including liability for: (a) death or injury resulting from the negligence of the Supplier; and (b) breach of any term as to title or quiet enjoyment.

## 12. Data Protection and Security

- 12.1. The Customer warrants that, in its use of Walled Garden, the Products and the Services:

12.1.1. it shall comply at all times with all applicable data protection legislation, including the General Data Protection Regulation ((EU) 2016/679) and the UK Data Protection Act 2018 (as may be amended from time to time);

12.1.2. it shall comply at all times with all data protection provisions in the applicable centre contract or end point assessment guide; and

12.1.3. it has a valid legal basis to enable the lawful transfer of personal data to the Supplier to enable the Supplier to use such personal data to provide the Products and/or Services to the Customer and carry all processing activities related to the provision of the Products and/or Services;

12.1.4. where the Customer provides special category personal data to the Supplier via the Walled Garden, the Customer has obtained the prior consent of the data subject to provide such special category data to the Supplier and shall provide evidence of such consent on request.

- 12.2. The Customer shall ensure that Messages containing any information relating to trade secrets, plans, intentions, product information, know-how, affairs or other business of either the Customer or the Supplier, howsoever communicated, that might reasonably be considered to be confidential in nature (“**Confidential Information**”) are maintained in confidence, are not disclosed to any person except as may be authorised by the Supplier or used other than for the proper use of Walled Garden. Any authorised disclosure to a third party shall be on the same terms as to confidentiality as contained in this clause 12 or as otherwise authorised by the Supplier.

- 12.3. The Customer warrants that it will ensure that adequate physical and logical security measures are enforced to protect the use of Walled Garden at the relevant location. The Supplier recommend that in respect of security all Approved Centres comply with ISO/IEC-17799.

- 12.4. The Customer shall indemnify the Supplier from and against any loss, damages, expenses or liability, including reasonable legal fees and costs that the Supplier may sustain as the result of any claim, suit or proceeding arising from a breach of any of the provisions in this clause 12.

## 13. Messages

- 13.1. In the event that the Customer becomes aware that it has sent an incomplete or corrupted Message, it shall immediately notify the Supplier and shall re-transmit such Message as soon as practicable with a clear indication that it is a corrected Message.

- 13.2. Prior to any such notification, and for a reasonable period thereafter, the Supplier shall be entitled to respond and/or to act upon any such incomplete or corrupted Message as if it were a complete non-corrupted Message and the Supplier shall have no liability for any such response or action.

- 13.3. Notwithstanding that the Customer is responsible and liable for the completeness and accuracy of Messages which it sends, the Supplier will not be liable for the consequences of an incomplete or incorrect transmission.

- 13.4. If a Customer or any other recipient has reason to believe that such a Message is not intended for it, it should take reasonable action to inform the Supplier and should delete the information contained in such a Message from its system.
- 13.5. Except where receipt of Messages is automatically confirmed, the Supplier may request the Customer to confirm receipt of the Message.
- 13.6. Each party shall process or deal with Messages which have been sent to it as a result of the performance of either party's obligations under this agreement as soon as possible.
- 13.7. All Messages received by the Supplier are subject to scrutiny by the Supplier information security staff for the purposes of identifying and preventing unauthorised use of the Supplier computer systems and computer held information
- 13.8. If the Customer uses the services of an intermediary third party in order to transmit, log or process Messages, the Customer shall be responsible to the Supplier for any acts, failures or omissions by that third party in its provision of the said services as though they were its own acts, failures or omissions, and for the purposes of this agreement such third party shall be deemed to be an agent of Customer.

**14. Intellectual Property**

- 14.1. The copyright and all other intellectual property rights in Walled Garden and all text, artwork, graphics or images to be found on Walled Garden are the sole and exclusive property of the Supplier or its licensors.

**15. General**

- 15.1. These Terms and all contracts made under it between you and the Supplier shall be governed by and interpreted in accordance with English Law. You submit to the non-exclusive jurisdiction of the in the courts of England, but the Supplier may enforce any such contract in any court of competent jurisdiction.