

1. DEFINITIONS

In these terms and conditions the following definitions

apply: **Client** =/9:

the person or company who has commissioned Helix Learning to create applications or e-learning content or deliver services.

Applications:

user software to provide, organise and administer learning and training activities.

Content:

digital content in e-learning and blended learning packages in all forms.

Services: website hosting, learning management systems, web applications and related activities.

2. APPLICABILITY

2.1 These terms and conditions apply to all offers and any agreement that Helix Learning concludes with the client.

2.2 If these conditions have since been amended, the client will have 14 days to object to the changes, after which the parties shall consult each other on the how to interpret the general terms and conditions. If the client has not responded within 14 days, it shall be deemed to have accepted the changes.

3. MODE OF EXECUTION OF THE ORDER

3.1 The client shall ensure that Helix Learning receives all of the relevant information supplied in good time required for creating the application and that the information is accurate, complete and up to date and complies with any specifications required by Helix Learning. Helix Learning is not obliged to perform data conversion, unless this is expressly agreed in writing with the client.

3.2 The client will appoint a contact person for communication between the client and Helix Learning, who will function as such for the duration of the work. Helix Learning is only required to communicate with this person.

3.3 Helix Learning is entitled, in consultation with the client, to contract out the commission or parts thereof to or to have it performed by third parties, if by doing so Helix Learning facilitates the good or efficient performance of the commission.

4. QUOTATIONS

4.1 Quotes by Helix Learning are non-binding, unless otherwise indicated. The client is responsible for the delivery of correct and complete information provided by them or on their behalf to Helix Learning, on which the quote by Helix Learning is based.

4.2 Helix Learning reserves the right, where more than two months pass between the quotation and the signing of the commission, to change the prices and tariffs offered in the event of any changes in labour costs or other cost factors.

5. INTELLECTUAL PROPERTY

5.1 All intellectual property rights vested in the applications, content or services created under the contract concluded with the client are the exclusive property of Helix Learning, its licensors or its suppliers. The client obtains the rights of use, are assigned to it in law or under the agreement concluded between the parties. These rights of use are not exclusive and may not be transferred or granted in a sublicense.

5.2 More extensive rights than those set out in 5.1 can only be granted to the client on the basis of a written agreement.

5.3 Notwithstanding the provisions of 5.2, Helix Learning has the right to all parts of the application developed for the client, including the general principles, designs, data, records and suchlike, without any restriction whatsoever on using or exploiting it for its own or other purposes, whether for itself or otherwise.

6. RIGHT OF USE

6.1 Helix Learning makes the applications, content or services available to the client on the basis of a user license for the term of the agreement.

6.2 The client has no right to the source code of the software, even if it is willing to make a payment for this.

6.3 The client may only use the applications, content and services within and for the benefit of its organisation or company. The client is not permitted to allow usage for third parties, such as for "software-as-a-service".

6.4 The licenses for applications, content or services, and/or the storage media on which the applications, content and/or services are stored, belong solely to the client and may not be sold, leased, alienated, encumbered with restricted rights or made available to a third party on any other basis by the client.

7. OTHER AND/OR ADDITIONAL WORK

7.1 If Helix Learning performs other and/or additional work for the client at its request than was previously agreed, then this work shall be reimbursed at the agreed rates, or failing that at its normal rates. Helix Learning is not under any obligation to accept requests for other work or additional work.

8. PRIVACY

8.1 The client is fully responsible for the authorised provision of the data used by Helix Learning for the applications, content and services they create. The client warrants that the content, use and/or the processing of the data are lawful and do not infringe the rights of third parties and shall indemnify Helix Learning against any third-party legal claim in this regard.

8.2 The client indemnifies Helix Learning against liability towards persons whose personal data is registered or processed by the client and whose personal data which Helix Learning has processed in its applications, content and/or services, unless the client disputes that the facts on which the liability is based are attributable to Helix Learning.

9. SECURITY

9.1 If and to the extent that Helix Learning is required to provide a form of information security under the agreement, that security must be specified in writing. Helix Learning does not warrant that the information security will achieve its goal under all circumstances. If a method of security has not been explicitly included in the agreement, the security shall satisfy a standard that is not unreasonable, having regard to the state of the art, the sensitivity of the information and the costs associated with taking the security measures.

9.2 If anyone at Helix Learning provides access to the client, whether in the form of identification codes or certificates, these are confidential, and will only be provided to authorised staff within the client's organisation.

9.3 The client shall adequately protect their systems and infrastructure and ensure that anti-virus software is constantly running.

10. DELIVERY AND INSTALLATION

10.1 The application shall be made available by Helix Learning on the agreed data carrier format or (in the absence of agreements in this regard) on a data carrier format that it will specify or it shall be made available to the client online.

10.2 Helix Learning will only install the application for the client if agreed. Unless otherwise agreed, the client shall further configure the application, provide parameters, tune it and, if necessary, adapt the equipment and user environment used.

11. ACCEPTANCE

11.1 The client accepts the application in the condition in which it is delivered, including all visible and invisible errors and defects, unless the parties have agreed to an acceptance test.

11.2 The application is accepted by the client:

- i. If an acceptance test was agreed upon: at the end of the testing period
- ii. If the client submits a report to Helix Learning no later than the final day of the test period in which the detected errors are clearly and comprehensively listed in detail: at the time that those errors are repaired.
- iii. When the client uses the application in any manner whatsoever: at the time of first use.

11.3 The term "error" is understood to mean the application being substantially not in accordance with the functional or technical specifications expressly stated in writing. An error must be demonstrated and made clear by the client, or be reproducible. An error should be reported immediately to Helix Learning. Helix Learning is not obliged to restore faults other than errors referred to in this article.

11.4 Minor shortcomings that do not reasonably prevent the operational or productive use of the application, do not count as errors and will not impede acceptance. The same applies to the evaluation of subjective elements, such as the aesthetic aspects of user interfaces.

12. FORCE MAJEURE

12.1 If Helix Learning is unable to perform this agreement after entering into it due to circumstances which were not known when the agreement was entered into or circumstances which Helix Learning could not reasonably influence, the agreement between Helix Learning and the client will be dissolved. In that case, the client has no right to compensation.

12.2 Force majeure on the part of Helix Learning shall in any case include:

a failure to duly comply with suppliers' obligations that have been required of Helix Learning by the client, defects in equipment, software, materials and/or property belonging to third parties which the client requires Helix Learning to use, government measures, internet, data network facility or telecommunications facility outages, war, general transport problems and force majeure suffered by the client's suppliers.

12.3 In addition, Helix Learning has the right to suspend the fulfillment of its obligations resulting from the agreement if it is temporarily unable to meet its responsibilities as a result of a change in circumstances which could not reasonably have been foreseen when entering into the agreement and which are beyond its control. Helix Learning must immediately notify the client thereof.

13. PAYMENT

13.1 Payment of invoices must be made within 14 days after the invoice date, unless expressly agreed otherwise.

13.2 If the payment period is exceeded, Helix Learning is entitled to charge the customer interest without prior notice or a letter of demand at a rate of 1% per month from the due date of the invoice, in which a part of a month is considered to be a full month.

13.3 The client is not permitted without the express written permission of Helix Learning to set off its payment obligations towards Helix Learning with a claim by the client against Helix Learning on any grounds whatsoever.

13.4 In the event of non-payment or late payment by the client, Helix Learning is entitled to claim the extrajudicial costs in accordance with the Extrajudicial Collection Costs Decree.

14. DISSOLUTION

14.1 Full or partial dissolution of the agreement takes place through a written declaration by the party entitled to do so. Before the client sends a written dissolution statement to Helix Learning, it should first give Helix Learning written notice of default and give Helix Learning a reasonable period of time to meet its obligations, or remedy any shortcomings. The shortcomings should be clearly specified in writing by the client.

14.2 The client is not entitled to dissolve the agreement in full or in part or to suspend its obligations if it was already in default of the fulfillment of its obligations.

14.3 If Helix Learning agrees to dissolve the agreement without any failure on its part, it is entitled in all cases to reimbursement for all financial loss, including but not limited to loss of profits and any costs required to determine the scope of the loss. The client cannot claim for the cancellation of services already provided by Helix Learning in the event of partial dissolution of the agreement. Furthermore, in the event of partial dissolution, Helix Learning has a right without prejudice to receive payment for products it has supplied or services it has already provided.

14.4 In all cases, Helix Learning can rescind the contract by a written declaration in the following circumstances if:

- the client fails to comply with any provision of these terms and/or any other clause of the contract and/or further agreements, or fails to comply with any other obligation towards Helix Learning;
- bankruptcy proceedings have been instituted against the client and/or a bankruptcy order has been issued;
- a court order for the suspension of payment by the client or the application of the Debt Management (Natural Persons) Act [Wet schuldsanering natuurlijke personen] (WSNP) is requested and/or is granted to it;
- the client concludes a voluntary arrangement with creditors.

15. LIABILITY

15.1 Neither Helix Learning nor its representatives may be held liable for damage resulting from accidents, emergencies or any cause, which occurs as a result of the use in any form of the applications, content and/or services provided.

15.2 In the event of any liability due to an attributable failure by Helix Learning, this will be limited to the amount that the client has actually paid for the relevant application.

16. APPLICABLE LAW

16.1 Dutch law is exclusively applicable to all agreements.

16.2 All disputes arising out of or connected with offers and agreements, regardless of how they are made, will be subject to the judgement of the civil court with jurisdiction over the place of establishment of Helix Learning, as far as legal provisions do not determine otherwise.