

Terms and Conditions of Business

1. Interpretation

1.1 Definitions

In these Conditions, the following definitions apply:

Candidate: the individual who takes a form of assessment in pursuit of a GA Qualification.

Candidate Data: any information concerning a candidate including any information derived from such information.

Centre: the person, firm, company or college/school which purchases products and services from GA.

Charges: the charges payable by the centre for the supply of the products and services.

Conditions: these terms and conditions, as amended from time to time.

Contract: the contract between GA and the centre for the supply of the products and services in accordance with these Conditions.

DPA: the current Data Protection Act / Privacy Regulations.

GA: Gatehouse Awards Ltd.

GA Qualifications: any qualification made available to the centre and certificated by GA including any qualifications regulated by Ofqual and listed on the Ofqual Register of Regulated Qualifications.

GA Materials: any documentation including policies, guidance documents, examination papers, candidate booklets, scripts and other forms and documents related to the delivery and administration of GA Qualifications together with any audio or visual recordings used in connection with the same.

GDPR: the General Data Protection Regulations.

Intellectual Property Rights: copyright and related rights, trade marks, business names and domain names, goodwill and the right to sue for passing off, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights.

Learning Records Service (LRS): a database managed by the Education and Skills Funding Agency for the purpose of collecting and holding candidate data and qualification achievements.

Personal Learning Record: the record held on the Learning Records Service for each candidate under the Unique Learner Number (ULN) allocated to that candidate, which includes qualification records and results achieved by that candidate.

Regulator: Ofqual or such other body discharging the same function as may be established from time to time.

Services: the services, including the provision of the GA Materials, supplied by GA to the centre as set out in the *GA Customer Service & Support Statement*.

1.2 Construction

In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- (c) a reference to a party includes its personal representatives, successors or permitted assigns;
- (d) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (e) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (f) a reference to writing or written includes faxes and e-mails.

2. Basis of Contract

- 2.1** The completion and transmission of the *Application for Centre Approval* by the centre shall constitute an offer by the centre to purchase GA products and services in accordance with these Conditions. The offer shall only be deemed to be accepted by GA upon written notification to the centre that it has been approved by GA.
- 2.2** The Contract constitutes the entire agreement between the parties. The centre acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of GA which is not set out in the Contract.
- 2.3** Any descriptive matter or advertising issued by GA, and any descriptions or illustrations contained in GA brochures, are issued or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4** These Conditions apply to the Contract to the exclusion of any other terms that the centre seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Supply of Services

- 3.1** GA shall supply the Services to the centre in accordance with these Conditions in all material respects.
- 3.2** GA shall use all reasonable endeavours to meet any performance dates specified in the Customer Service & Support Statement, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3** GA shall have the right to make any changes to the Services which are necessary to comply with any applicable law, regulation, or safety requirement, or which do not

materially affect the nature or quality of the Services, and GA shall notify the centre in any such event.

- 3.4** GA warrants to the centre that the Services will be provided using reasonable care and skill.

4. Centre's Obligations

4.1 The centre shall:

- (a) take all reasonable steps to ensure that GA is able to comply with the General Conditions of Recognition, all applicable regulations and legislation and shall undertake delivery of the GA Qualifications in accordance with all applicable laws including any equality provisions whether contained in the Equality Act 2010, any applicable regulations, or at all;
- (b) take all reasonable steps to comply with all and any requests for information or documents (inclusive of audio and video files) made by GA, its representatives or the Regulator within any timescales specified;
- (c) provide GA, its representatives, and the Regulator with access to its premises, people and records, including satellite centres, and to co-operate with any reasonable monitoring activities requested or investigations undertaken by those parties (including assisting the Regulator in any investigations carried out in connection with the performance of its functions);
- (d) appoint an Examinations Officer who will be responsible for the compliant administration of all GA Qualifications, including, but not limited to, record keeping, requesting and receiving examination or other assessment and moderation materials and ensuring the security of the same including when distributing or collecting materials from satellite centres;
- (e) retain a staff team of appropriate size and competence and all other resources and systems necessary to undertake the compliant delivery of the GA Qualifications, assessment, examinations, internal moderation and internal quality assurance and shall update GA in a timely manner of any changes to those staff who are directly or indirectly involved in the delivery and administration of GA qualifications;
- (f) have arrangements in place to obtain a unique learner number (ULN) per learner via the Learning Records Service (if applicable, e.g. publically funded candidates) and supply to GA details of the candidate and evidence of identification plus, where applicable, the ULN;
- (g) be able to allow for recognition of prior learning for candidates, either by using access to their Personal Learning Record held by the Learning Records Service or other suitable evidence;
- (h) have administrative systems in place to track the progress of candidates towards their target awards, where applicable;
- (i) document the respective roles and responsibilities of each partner where the centre is a partnership arrangement between organisations;
- (j) comply with GA examination booking procedures for qualifications requiring formal examinations, taking all reasonable steps to prevent the loss, theft of or breach of confidentiality in external controlled examination materials and immediately inform GA if this occurs;

- (k) ensure candidates are fully aware of the requirements of the GA Qualifications they are taking, and provide appropriate tuition, information and support, in accordance with all applicable legislation and regulations, including equalities legislation;
- (l) ensure candidates are fully aware of the certification timescales of GA Qualifications and its enquiries and appeals procedure;
- (m) identify, investigate and report any suspected maladministration or malpractice of GA in line with the published policy, ensuring it implements an action plan which enables it to rectify any negative impact or adverse effects arising from such an incident, and regularly review its internal procedures for preventing and reporting malpractice and maladministration;
- (n) organise the delivery of assessment, examination, moderation and internal quality assurance in accordance with GA' requirements, ensuring that all requirements are fully communicated to, and understood by, all candidates and centre staff;
- (o) ensure that evidence provided by the candidate as part of the examination or assessment has been generated by that candidate and can be authenticated and verified;
- (p) ensure all records are to be kept for a period of two years from the date that the certificate was issued and shall be made available upon request to GA for monitoring purposes and to any relevant Government body;
- (q) allow GA, its representatives and the Regulator access to staff, records and resources, providing assistance to GA and Regulators for the purpose of moderation, external quality assurance or other investigations, including visits made without prior notice;
- (r) retain records of candidate details, quality assurance and results for a period of not less than two years;
- (s) operate robust and consistent complaints and appeals handling procedures, for the benefit of the candidates including escalation to GA where necessary;
- (t) provide GA with a minimum of 3 months prior notice in writing of any intention to withdraw the centre from its role in delivering a GA Qualification, in line with the centre withdrawal process;
- (u) take all reasonable steps to protect the interests of candidates in the event of such a withdrawal, and co-operate fully throughout the withdrawal procedure;
- (v) ensure that all staff engaged by the centre meet the requirements of the qualification they are involved in delivering and/or quality assuring and undertake assessment in accordance with the requirements outlined in the relevant Qualification Specification;
- (w) ensure that all staff engaged by the centre accurately understand the criteria by which candidate performance is assessed, and staff are able to accurately and consistently apply the criteria;
- (x) confirm that the Conflict of Interest Policy has been circulated to and signed by all relevant personnel, including all relevant contractors or consultants and that the said individuals are fully aware of what may constitute a conflict of interest;
- (y) inform GA of any potential or actual conflicts of interest as soon as is reasonably practicable and inform GA immediately of any changes to the details contained in the Centre Approval Form and Qualification Approval Form;

- (z) complete the annual re-approval process, including confirmation of continuing compliance with all applicable terms, conditions, regulation and legislation;

4.2 If GA's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the centre or in the reasonable opinion of GA, the centre is guilty of malpractice, serious maladministration or has acted negligently or there has been a failure by the centre to perform any relevant obligation ('Centre Default');

- (a) GA shall without limiting its other rights or remedies have the right to suspend performance of the Services until the centre remedies the centre default, and to rely on the centre default to relieve it from the performance of any of its obligations to the extent the centre default prevents or delays GA's performance of any of its obligations;
- (b) GA shall not be liable for any costs or losses sustained or incurred by the centre arising directly or indirectly from GA's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the centre shall reimburse GA on written demand for any costs or losses sustained or incurred by GA arising directly or indirectly from the centre default.

5. Charges and Payment

5.1 The Charges for the Services shall be on the following basis:

- (a) the charges shall be calculated in accordance with GA's standard fee rates, as published and/or made available on request.

5.2 The centre is required to make payment to GA upon registration of a candidate. In the event that GA issue an invoice to the centre the same shall be payable to GA immediately upon receipt. Time for payment shall be of the essence of the Contract.

5.3 If the centre fails to make any payment due to GA under the Contract by the due date for payment, then the centre shall pay interest on the overdue amount at the rate of 4% per cent per annum above HSBC bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The centre shall pay the interest together with the overdue amount.

5.4 The centre shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). GA may at any time, without limiting its other rights or remedies, set off any amount owing to it by the centre against any amount payable by the GA to the centre.

6. Intellectual Property Rights, Use of Logos and Accuracy of Statements

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by GA.

6.2 The centre agrees that it will not make use of any of GA's trademarks, trading names, logos or other insignia except as expressly agreed by GA and in accordance with GA's

written instructions, removing all such wording and images following the termination of the Contract;

- 6.3** The centre agrees that it will not make any statements, advertisements or promotions in relation to GA, its qualifications, products or services that are likely to mislead candidates and other users of the qualifications.

7. Data Protection & Security

- 7.1** Each party warrants that it shall comply with all current Data Protection legislation, including the General Data Protection Regulations and the Data Protection Act 2018.
- 7.2** The Centre shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access, loss, or damage to any and all Services, the systems of the Centre, GA Materials and Candidate Data.
- 7.3** The Centre must be registered with the Information Commissioner's Office for data protection purposes and shall provide such evidence of the same as is reasonably requested by GA.

8. Confidentiality

- 8.1** A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 8 shall survive termination of the Contract.

9. Limitation of Liability

- 9.1** Nothing in these Conditions shall limit or exclude GA' liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - (b) fraud or fraudulent misrepresentation.
- 9.2** Limitation of Liability:
- (a) GA shall under no circumstances whatever be liable to the Centre, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

- (b) GA' total liability to the Centre in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Charges for the Services paid or payable by the Centre to GA.

9.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.4 This clause 9 shall survive termination of the Contract.

10. Indemnity

10.1 Centre shall indemnify GA against all liabilities, costs, expenses, damages, and losses (including but not limited to) any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, and legal costs (calculated on a full indemnity basis) and all and other professional costs and expenses suffered or incurred by GA arising out of or in connection with any claim made against GA arising out of or incurred by reason of any breach by the Centre of any of its obligations under the Contract.

11. Termination

11.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party three months' written notice.

11.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company);
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; and
- (i) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

11.3 Without limiting its other rights or remedies, GA may terminate the Contract with immediate effect by giving written notice to the centre if: (1) the centre fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 7 days after being notified in writing to do so; or (2) the financial position of the centre deteriorates to such an extent that in GA' opinion the centre's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or (3) the ownership, management, or control (within the meaning of section 1124 Corporation Tax Act 2010) of the centre is transferred to a party who has previously lost the approval of GA or another regulated awarding organisation or who in the reasonable opinion of GA has shown itself not to be fit and proper in relation any involvement in the delivery or administration of regulated qualifications.

11.4 Without limiting its other rights or remedies, GA may suspend provision of the Services under the Contract or any other contract between GA and the Centre if the Centre becomes subject to any of the events listed in clause 11.2 or GA reasonably believes that the centre is about to become subject to any of them, or if the Centre fails to pay any amount due under this Contract on the due date for payment.

12. Consequences of Termination

12.1 On termination of the Contract for any reason:

- (a) the centre shall immediately pay to GA all of GA' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, GA shall submit an invoice, which shall be payable by the centre immediately on receipt;
- (b) the centre shall return all of the GA materials and any part of the Services which have not been fully paid for. If the Centre fails to do so, then GA may enter the centre's premises and take possession of them. Until they have been returned, the centre shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

13. Force Majeure

13.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of GA including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Centre or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or

direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Centres or subcontractors.

13.2 GA shall not be liable to the centre as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

13.3 If the Force Majeure Event prevents GA from providing any of the Services for more than 4 weeks, GA shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the centre.

14. General

14.1 Assignment and other dealings

- (a) GA may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Centre shall not, without the prior written consent of GA assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

14.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause (a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one working day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.3 Severance

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.4 Waiver

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.6 Third parties

A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.7 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the centre.

14.8 Governing law

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

14.9 Jurisdiction

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Document Specification:	
Purpose:	This document sets out the reciprocal commitments between GA and its Approved Centres with regards to the level and standards of business practices.
Accountability:	GA Governing Body
Responsibility:	Responsible Officer
Version:	6.0
Effective from:	February 2022
Review date:	February 2025
Links to Ofqual GCR	C2
Other relevant documents:	GA Centre and Qualification Approval Procedure GA Application for Centre Approval (UK/International), and the Application for Qualification Approval GA Centre Handbook GA CASS and Moderation Policy and Procedure