

Mathewhackits - General Terms and Conditions

About

Thank you for using Mathewhackits, created by David Garcia. These terms are between the legal entity (“**Subscriber**”) identified in the Mathewhackits order form (the “**Order Form**”) and “**David Garcia**” for supply of Mathewhackits services (“**Services**”), content (“**Content**”) and/or use of the) available via the Mathewhackits platform (“**Platform**”) or for use with the Platform as specified by Subscriber in the Order Form.

This Agreement consists of these General Terms and the Order Form (“**Agreement**”).

Licence to access and use the Platform

Subject to the terms of this Agreement, David Garcia grants Subscriber a limited, revocable, non-exclusive and non-transferable licence for its Users to access and use the Platform and such parts of the Content as are specified in the Order Form (“**Licensed Content**”) for educational purposes only, and for the period of the subscription stated in the Order Form (the “**Subscription Period**”), subject to earlier termination of this Agreement in accordance with its terms. The access and usage rights provided under this Agreement are granted to the Subscriber only, and shall not be considered granted to any subsidiary, affiliate or holding company of the Subscriber. **For the avoidance of doubt, permitting any party other than the Subscriber’s Users (whether an affiliated school, academy, person or other institution) shall be deemed a material breach of this Agreement which may result in David Garcia taking action against Subscriber including (without limitation) suspension of Services or Content and access to the Platform without any refund of Subscription Fees.** David Garcia reserves the right to monitor Subscriber’s activity on the Platform to confirm appropriate usage as provided herein.

Certain Licensed Content and functionality of the Platform might require Subscriber to create an account (“**Account**”). Subscriber shall not access or attempt to access an Account that it is not authorised to access. Access to Subscriber’s Account is controlled with a unique username and password. Subscriber is responsible for keeping the Account password confidential and secure against unauthorised use, and for all activity that occurs using that Account. Subscriber must provide true, accurate, current and complete information about itself as requested by David Garcia.

The individual entering into this Agreement represents and warrants that they are authorised to do so on behalf of Subscriber and that they are authorised to give the representations and warranties given by Subscriber in these terms.

Users

Subscriber shall be responsible for all users accessing the Platform through Subscriber’s account (“**Users**”) and Subscriber shall ensure that Users comply with the terms of use of the Platform accepted by Users on their registration to use the Platform, as varied from time to time in accordance with such terms of use. Subscriber shall be liable for the acts or omissions of Users’ access to and use of the Platform, the Services, the percussion instrument and/or the Licensed Content as though they were the acts or omissions of Subscriber.

Subscriber shall procure that Users shall not attempt to obtain, or assist third parties in obtaining unauthorised access to the Platform or any Content. Subscriber shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Platform, the Services and/or the Licensed Content and shall notify David Garcia promptly of any such unauthorised access or use.

Charges and Payment

In consideration of the provision of Subscriber’s access to and use of the Platform, Services, Licensed Content Subscriber shall pay David Garcia the fees calculated and payable as set out in the Order Form (the “**Subscription Fees**”).

All amounts and fees stated or referred to in this Agreement are exclusive of value added tax, (VAT) which shall be added to David Garcia’s invoice(s) at the appropriate rate.

Any and all access to the Platform and/or Licensed Content shall be strictly subject to prior receipt of payment for all Subscription Fees. The Subscription Fees will be reviewed by David Garcia annually, and David Garcia may propose an increase to the same no more than once in every year of the Subscription Period by written notice to Subscriber.

Availability of the Platform and the Licensed Content

Subject to the remaining provisions of this Agreement, David Garcia shall use commercially reasonable endeavours to make the Platform, the Services and Licensed Content available 24 hours a day, seven days a week, except for:

- an event of Force Majeure; or
- planned maintenance and unscheduled maintenance provided that where it is possible to do so David Garcia has used reasonable endeavours to give Subscriber advance notice of such maintenance.

Copyright and other Intellectual Property Rights

Subscriber acknowledges and agrees that:

- David Garcia owns all patents, copyright, database right, trade names, trademarks (whether registered or unregistered), performer's rights and any other proprietary rights ("**Intellectual Property Rights**") in the Platform, the Services, and the Licensed Content and, save for the express rights granted in this Agreement, Subscriber acknowledges that all other rights to exploit the Intellectual Property Rights in the Platform, the Services, and the Licensed Content are reserved to David Garcia
- Content is provided by way of a licence only and such licence shall cease upon termination of the Agreement; and
- it will not, whether during the Subscription Period or at any time after termination of this Agreement, in any way question or dispute the legal and beneficial ownership by David Garcia or any applicable third party owner of the Intellectual Property Rights in the Platform or the Licensed Content (or any part thereof).

All Intellectual Property Rights in and to the Content shall be owned by the applicable licensors. Subscriber and its Users shall have sole responsibility for the legality, reliability, accuracy, quality and suitability of the Licensed Content and David Garcia shall not be liable to Subscriber or its Users for any use made by them of the Licensed Content to the fullest extent permissible by law.

No portion of the Platform or the Content may be reproduced in any form or by any means, except as expressly permitted hereunder. Subscriber agrees not to sublicense, modify, rent, lease, loan, sell, distribute or create derivative works based on the Platform or the Content, in any manner, and Subscriber shall not exploit the Platform or the Content in any unauthorised way whatsoever.

Termination and Suspension

David Garcia reserves the right to suspend or terminate Subscriber's access to the Platform at any time at David Garcia's sole discretion without any liability to Subscriber, save for (other than for Subscriber's breach of this Agreement) the refund of any part of the Subscription Fees attributable to the unused portion of the Subscription Period at the effective date of termination, calculated pro rata. In the event Subscriber chooses to suspend or terminate its access to the Platform, no refund of Subscription Fees will be given.

Disclaimer of Warranties

David Garcia warrants that it will provide the Platform, Services and the Content with reasonable care and skill and in accordance with this Agreement.

Without limitation to the foregoing:

- David Garcia does not guarantee, represent, or warrant that use of the Platform will be uninterrupted or error-free; and
- David Garcia does not represent or guarantee that the Platform will be free from loss, corruption, attack, viruses, interference, hacking, or other security intrusion, and David Garcia disclaims any liability relating thereto to the fullest extent permissible by law. Subscriber acknowledges that it and its Users shall be responsible for backing up the Content, subject to the terms of this Agreement, and for safeguarding its data and other files during installation, when upgrading, or when installing an update.

Limitation of Liability

David Garcia shall be in no way liable under or in connection with this Agreement, however that liability arises, for consequential, special, incidental or indirect losses or for loss of profits, loss of business, loss of anticipated savings and/or loss of goodwill, even if such damage or loss could reasonably be supposed to have been in the contemplation of either of the parties when entering into this Agreement.

Subject to the remaining provisions of this clause, and except for the Subscriber Indemnity or for the Subscriber's or its Users' unauthorised or unlawful use of the Platform, the Services, the Content and/or (if applicable) the percussion instrument (for which the Subscriber's liability will not be capped), each party's maximum aggregate liability under or in connection with this Agreement, however that liability arises, shall in no circumstances exceed the total value of the Subscription Fees paid or payable to David Garcia for the duration of the Subscription Period.

Nothing in this Agreement shall exclude or in any way limit either party's liability for fraud, or for death or personal liability caused by its negligence or any other liability to the extent the same may not be excluded or limited as a matter of law.

Subscriber acknowledges and agrees that it shall be solely responsible for the safe use of the percussion instrument. Percussion instrument should not be used on any hard or fragile surfaces. David Garcia shall be in no way liable for any and all injuries and/or property damage as a result of use of the Licensed Content (including damage to the percussion instrument).

Subscriber Indemnity

Subscriber shall indemnify David Garcia against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and legal fees) arising out of or in connection with:

- Subscriber's or its Users' unauthorised or unlawful use of the Platform, the Services, the Content and/or (if applicable), breach of this Agreement; and

- as a consequence of any infringement by Subscriber or its Users of any Intellectual Property Rights in the Platform, the Services, the Content and/or (if applicable) the percussion instrument

Data

Subscriber acknowledges and agrees that, subject always to applicable data protection laws, David Garcia reserves the right to collect, store and share data within the EU (as provided below) relating to Subscriber's use of the Platform. This data may include inter alia the name of schools, name and contact details of professional contact at the school, the number of pupil Users, age of pupil Users, gender of pupil Users, name and contact of parent.

In addition to the foregoing, David Garcia reserves the right to access and analyse anonymised data relating to site traffic information for the purposes of verification of appropriate use of the Platform and/or to optimise the Platform.

Force Majeure

Neither party shall be liable for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any act, event, non-happening, omission or accident beyond its reasonable control (a "**Force Majeure Event**"). Force Majeure Events shall include (without limitation) the unavailability of third party telecommunications or services; strikes, lock-outs or

other industrial action (other than strikes, lock-outs or other industrial action of any contractors of the party seeking to rely on the Force Majeure Event); impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; act of public enemy or terrorism; or compliance with any law or governmental order, rule, regulation or direction.

Entire Agreement and Third Party Rights

This Agreement supersedes all prior agreements between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. The parties confirm that they do not intend to confer any rights on third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

Variation

David Garcia reserves the right to make changes to this Agreement at any time. Changes to this Agreement will be announced by sending a notice to the Subscriber. Subscriber's and Users' continued use of the Platform will be deemed acceptance of any such changes.

Law and Jurisdiction

This Agreement is governed by the law of England and Wales and the parties submit to the exclusive jurisdiction of the English courts to resolve any dispute between them arising under or in connection with this Agreement.

