

# TERMS AND CONDITIONS OF SALE TO INDIVIDUALS

Gymglish

January 24, 2017 v3.4

## INTRODUCTION

The A9 Company (hereafter referred to as "The Company"), an SAS with a capital of 81,382 euros, is registered with the Registry of Trades and Companies of Paris under RCS Paris B 451 911 812. Its headquarters are located at 16A Boulevard de Reuilly, 75012 Paris, France - email address: support@gymglish.com. Its EEC VAT number is FR10451911812. The Company's website publication manager is Benjamin Levy.

The Terms and Conditions of Sale to Individuals ("TCS") apply to all sales made by the Company to individual customers.

By using our Site and/or Applications, you unreservedly accept these conditions, which you acknowledge having read and understood.

These conditions are applicable for the entire duration of your browsing on the Site, as well as for the entire duration and/or use of the Services and/or of the Applications.

When validating their order, customers agree to the terms of the specific order, the entirety of the present TCS and the Terms of Use (TOU) available at the following address:

<https://www.gymglish.com/documents/CGU-GymGlish-en-latest.pdf>

In cases where the User is not the Client, the Client remains responsible for the acceptance and respect of the TOU for each of the Users the Client designates and to whom the Client intends to propose the Company's Services, under its responsibility. Possible specific Conditions of Sale can supplement or replace the present ones. They will be communicated to the Client who will be asked to accept them.

Explanatory comments in the right-hand column of this document have no binding legal value; they serve only to facilitate the overall comprehension of the document, re-written in simpler terms.

### **Explanatory comments:**

*This is what we sell, and how to buy it.*

# 1 UPDATES

The Company reserves the right to amend this document at any time.

If applicable, the revision number and date located at the top of this document will identify the version.

Each update will be published on our Site. Any changes will take effect upon said publication.

By continuing to use the Site, the Services and/or Applications, or by accessing them after an update of our terms, you acknowledge and accept all of the modifications therein.

For translations, the reference document for interpretation shall be the original French, whose latest applicable version is available at the following address: <https://www.gymglish.com/documents/cgvps-fr-latest.pdf>

*We reserve the right to change the terms of this document.*

# 2 DEFINITIONS

**Activation** refers to The start date of the Subscription.

**Application or mobile Application** refers to a program designed and/or produced by the Company that is downloadable and executable from the operating system of a smartphone or tablet.

*You can access our Service from your smartphone or tablet using our Applications.*

**Client** refers to an adult and able person or company who either accepts the Listing of a Seller on the Marketplace or purchases a Subscription on his own account, or on behalf of one or more User(s).

*The Client is the buyer.*

**Course** refers to all of the Lessons completed by and tailored to each User.

*Each User follows a personalized learning Course.*

**Lesson** refers to the content of the lesson, the content of the corrections and the content of any supplementary corrections tailored to each User.

*Our Lessons are personalized.*

**Listings** refers to the service offer(s) proposed directly by a Seller to other Users via the Marketplace.

*Listings are third party offers.*

**Marketplace** refers to a dedicated space on the Site allowing for Listings by Sellers to be posted and viewed by the Users.

*Many Sellers offer Services on our Marketplace*

**Provision** refers to service offered directly to the User by a Seller through a Listing on the Marketplace.

*Provisions are offered directly by third parties on the Marketplace.*

**Product** refers to one of the Gymglish, Frantastique or Rich Morning Show offers, whether on the Application or on the Site.

*Product refers to our training solutions.*

**Seller** refers to an adult and able person or company who uses the Marketplace and posts Listings viewable by Users.

*The Seller places Listings to offer You his services.*

**Service** refers to the design, production, delivery and correction of personalized Lessons provided by the Company.

*Our Service includes, in particular, the sending and correction of Lessons.*

**Site** refers to the set of web pages managed by the Company, including gymglish.com, gymglish.fr, frantastique.com, frantastique.fr, richmorning.com.

*Site refers to all websites managed by the Company.*

**Subscription** refers to placing the Service at a User's disposal for a fixed price and duration, regardless of the number of Lessons completed by the User.

*Strictly speaking, we are not selling Lessons but a Subscription at a fixed price allowing access to our Service during the Subscription period.*

**Test** refers to the testing of the Service, proposed free of charge to the User for a limited period of time.

*Our Test is free and without commitment.*

**"User" or "You" or "They"** refers either to someone who has created an account on the Marketplace, or a person who uses the Service. Each User may subscribe to one or more Course.

*The User is you.*

### **3 OBJECT**

These TCS, which solely address individuals who hold the status of consumers under the provisions of the Consumer Code, are intended to define the features and conditions of purchase of the Company's Products.

As required by law, the consumer is defined as any physical person acting in connection with the order, for purposes that are not within the scope of his/her professional activity.

## 4 FEATURES AND CONDITIONS OF SUBSCRIPTION

Every User follows a personalized curriculum, comprising Lessons. During the term of the Subscription, it is possible to substitute a User with another User if applicable. Compliance by the Client and the User(s) of these Subscriptions' features is an important condition of the TCS.

Except 1-month "Unlimited" Subscriptions, there is NO automatic renewal.

### 4.1 Free Trial

Prior to Subscription, Clients may sign up for a free trial period without commitment, allowing them to validate the compatibility of their software environment with the Services. The Trial Period does not require a credit card number. If Clients wish to buy a Subscription, they can visit the online shop, where different offers are presented.

### 4.2 Description of common features for Gymglish and Frantastique Products

All Gymglish and Frantastique Products are available via the Website or via a dedicated Application. As they are identified by their e-mail address, Users can choose either of these methods of access. The same Lessons are available on both platforms. Every Gymglish and Frantastique Product allows Users to receive and complete a maximum of five Lessons per week, except at the beginning of the Trial Period, where the frequency may be greater. Users choose the days of the week when they wish to receive their Lessons with a minimum of one Lesson per week and within the limit of five, as previously indicated. By default, the Company sends the new Lesson on the first available day of reception depending on the User's response. Failing to receive a response from the User, the Company sends a reminder for the same Lesson on the first available day of reception seventy-two hours after the last mailing. Users can also set, in their Lesson or in their personal space, a period when Lessons may be paused (Manage my Absences in the Workbook), if this option is offered. This option affects neither the price nor the time period of the Gymglish or Frantastique Subscriptions bought.

Gymglish's and Frantastique's content may offend certain users due to its tone, possible references to

*We consider automatic and tacit renewals of long-term subscriptions to not be consumer friendly. Thus, for all our Subscriptions of a duration of more than one month, the Client must make a purchase in our online shop to renew his/her expired Subscription.*

*We offer a free trial period that does not require a credit card number, permitting users to explore our Services and test software compatibility..*

*The Frantastique and Gymglish Subscriptions allow Users to receive and process a maximum of five Lessons per week.*

adultery, common cultural stereotypes in North America and in Europe, which may be perceived as immoral in other cultures or other parts of the world. Therefore, these Products are not recommended for underage individuals. The Company cannot be held responsible for any consequences related to the content of the Lessons.

### **4.3 Description of the Features of the Rich Morning Show Website**

The Rich Morning Show caters towards teenagers and English beginners. It includes three sequences of twenty-one Lessons, incorporating twenty-one videos of the curriculum in ascending order of difficulty. If all sixty-three lessons are completed, the Service then focuses on the revision of knowledge. By default, the Company sends the new Lesson on the first available day of reception depending on the User's response. Failing to receive a response from the User, the Company sends a reminder for the same Lesson on the first available day of reception seventy-two (72) hours after the last mailing.

*The Rich Morning Show Service is designed for adolescents and beginners, and consists of three sequences of twenty-one Lessons followed by exercises.*

### **4.4 Acceptance of the Order**

**The Client accepts to pay the set amount due for the provision of the Service, regardless of the number of Lessons actually completed.** The order is completed via the Website or the Applications. Clients choose the offer(s) they wish to subscribe to. If the Client subscribes to the Service on behalf of one or more User(s), the Client may, when ordering or eventually later, designate the User(s).

To purchase, Clients indicate their personal details and, where appropriate, the details of the User(s), as well as payment information. The Client is responsible for the accuracy of all the information provided to the Company and payment service providers, including their address and country of residence, which are required to accurately know the rate of European VAT to which the Client is subject. The Client also ensures that they will provide the accurate first name and last name for any User they sign up.

Clients may confirm their order after having viewed its details, total price, including all fees and taxes. They will have the opportunity to correct any errors. The contract is created upon the validation of the order of the Subscription(s) by the Company. Within the limits prescribed by applicable law, the validation of

the order constitutes an electronic signature between the Parties - equivalent to a handwritten signature between the Parties.

The Company must receive and validate the payment no later than 45 days after the Subscription. If the payment is not received within this period, the Company may cancel the order and delete the Subscription.

When the Client purchases on behalf of one or more User(s), particularly when purchasing several Subscriptions, the Client is not required to assign the Subscription(s) at the time of the order. The Client may appoint the User(s) at a later stage by contacting support@gymglish.com.

In the event the User(s) do not use the Service, except if the case is provided for in the Article "Right of Withdrawal", the Company shall not have to reimburse all or part of the purchase because the Subscription consists in the provision of the Service regardless if the Subscription is used or not.

The Subscription packages, described more specifically in the online shop via the Website or Applications, may be separated into two large families of Subscriptions:

#### **4.4.1 "Unlimited Time Period" Subscriptions**

The Gymglish, Frantastique or Rich Morning Show Subscription may be purchased for a "Unlimited Time Period", i.e. a subscription of one month, renewable automatically every month. The Client may terminate the "Unlimited Time Period" Subscription(s) at any time by going to his/her personal webspace, subject to having requested the cancellation no later than three (3) days before the end of the Subscription period in progress. The service will continue until the subscribed period expires. Cancellation does not give right to any refund, partial or total, of the current subscribed period or to a carryover of uncompleted Lessons. In the event of a change in the public price of Subscriptions, the "Unlimited Time Period" Subscription offer chosen by the Client will remain unchanged in terms of monthly payments, as long as the Subscription is not canceled.

#### **4.4.2 "Fixed Length" Subscription(s)**

The Gymglish, Frantastique or Rich Morning Show Subscription may be chosen for a "Fixed Length", that is, a number of months defined in the description of the package. The Client is committed for the entire

*The Client agrees to settle the complete sum of the Subscription all at once or by monthly installments.*

*The Unlimited Time Period Subscription is automatically renewed every month and may be stopped at any time.*

*On our Website, at the end of a "Fixed Length" Subscription, the Client must make a new purchase to renew a subscription. We have not put in place tacit renewal.*

period from one date to a fixed date in the future and may receive a maximum number of Lessons as described in the package. The price and time period of the Subscription are described in the Website shop at the time of purchase. A "Fixed Length" Subscription is never automatically renewed.

#### **4.5 Commitment Over Time**

For all Services, registration to a Subscription means a commitment for a period of time and not for a given number of lessons. Once the User subscribes to the Service, the User can choose to follow (or not to follow) a maximum of five Lessons per week. If the User chooses to follow, or not to follow Lessons, there is no impact on the payment of the Subscription. In the case of regular payments, if the payment information held by the Company was no longer valid, an update could be requested to the Client, in order for the Offer to continue. The Client agrees to update such information in the shortest possible time.

*The Subscription is the provision of the Service for the fixed period specified at the time of the purchase, regardless of the number of Lessons followed by the User.*

### **5 SPECIAL PURCHASE AND OPERATION CONDITIONS OF THE RICH MORNING SHOW APPLICATION**

The Rich Morning Show Application is unrelated to the Service of the Rich Morning Show Website, and is solely for tablet Users. Unlocking Lessons from the Rich Morning Show Application is proposed as an in-app-purchase (purchase option within the Application). The unlocking of Lessons does not mean the User benefits from a Subscription. Unlocked Lessons and Applications Purchases are linked to the user account and remain acquired in case these have to be reinstalled or changed from one device to another, in accordance with Apple and Google provisions respectively, and for the Apple Store and Play Store. To reactivate a pack of Lessons or an Application previously purchased, simply repeat the purchase in the Store. This second purchase will not be charged because the Store keeps a track of the first purchase.

*This paragraph solely concerns the Rich Morning Show application for tablets.*

Lessons unlocked by in-app-purchases are exclusive to the Application used on tablets, and are not accessible on the Rich Morning Show Website.

## **6 PRICES AND PAYMENT CONDITIONS**

### **6.1 Price**

The Company's offers are invoiced according to prices displayed in the Website shop or in the Application at the time of purchase - the offer is valid for two hours after its display time. The Company reserves the right to change the price at any time during the offer period. Any revision is applicable only to deals subscribed after the new prices go into effect. Offers do not include the cost of an Internet access required to access the Services, which remains the responsibility of the Client.

*Prices are available on both the Website and Applications. They can be modified by the Company.*

### **6.2 Payment Conditions**

Payments are made:

- by credit card when the payment method is proposed (note: a 1 Euro preauthorization fee is sometimes required to verify the card's existence before finalizing the purchase. This small sum temporarily appears on the statement of transactions for about two weeks, but is then refunded when the actual amount corresponding to the purchase is deducted);
- by bank transfer when this payment method is proposed;
- by Paypal when this payment method is proposed;
- by any other means of payment proposed at the time of the purchase.

Payment of Gymglish, Frantastique or Rich Morning Show Subscriptions is done either by recurring debits, or in a single transaction at the time of purchase.

The Company is not liable for payment problems related to the operation of electronic commerce services.

Invoices issued by the Company are available for Clients in their personal web space. Invoices and/or notifications of payment can be issued in the name of A9 or in the name of GYMGLISH, main trademark of the Company, regardless of the Product or Service purchased.

It is agreed that, if the payment was canceled after acceptance of the order, the offer(s) subscribed is (are)

*Payment can be made either via monthly debits or via a single transaction.*



also canceled, without prejudice to any action that the Company could take. Furthermore, in case of non-respect of payment obligations, it shall be noted that the bonus months granted to the Client, as well as any sponsorship benefits, will be canceled.

### **6.3 Specific conditions for purchases made via app stores and marketplaces**

If the purchase is made via the Apple Store or Google Play Store, the Client must accept the Terms and Conditions of Sale of these Stores in addition to the present Terms of Sale to be able to finalize the purchase.

In this case, the seller is not the Company, but the operator of the Store, therefore the operator should provide the invoice to the Client, and not the Company.

*Warning: buying our products via Apple Store or Google Play means accepting their Terms and Conditions in addition to ours.*

## **7 CERTIFICATION**

Upon completion of the Client Subscription, the Company will deliver a level assessment (called the Gymglish diploma), based on the User's continuous evaluation throughout the training period. Depending on the User's offer (eg 1 year Gymglish PRO offer), and provided that the User is properly identified (via their signatures and/or photo identifications), this diploma will be certified by the Company.

*Gymglish delivers level assessments and certifications.*

## **8 SPONSORSHIP**

The User has the possibility to send his/her contacts, either by email or through a copy of a customized link on social medias, an invitation to test the Service. If this person accepts, he/she will be considered the "Referral" of the User. If several Users sponsor the same person, only the first to have done so will be considered the Sponsor (this is determined by the e-mail address of this person). The Sponsor can enjoy benefits described in the Workbook. The Company agrees to apply its Privacy Policy to all "Referrals".

*The User can invite his/her contacts to try the Service. All these new "Referrals" allow the User to benefit from advantages.*

## **9 ASSISTANCE**

For any information, the Company's customer service is available through the Website, mostly on the pages [help.gymglish.com](http://help.gymglish.com), [help.frantastique.com](http://help.frantastique.com) and [help.richmorning.com](http://help.richmorning.com), via email by using the address

*The Company offers Clients online help Websites, as well as assistance by email.*

support@gymglish.com, via chat in our online shop or by telephone at +33 1 53 33 02 40. We invite our Clients to use our email support system which ensures the best traceability.

## **10 RIGHT TO WITHDRAWAL**

Regarding the Subscriptions, the Client has a fourteen (14) day retraction period from the date of order to exercise his/her right to withdrawal without having to justify reasons or pay a penalty to the Company.

To exercise his/her right of withdrawal, the Client must notify the Company of his/her decision to withdraw by sending an explicit e-mail to support@gymglish.com. In this case, the Company will immediately acknowledge this withdrawal and having received the email. In case of withdrawal of the Client, the reimbursement of the order is made by the Company if possible by the same means of payment used during the initial transaction, unless otherwise agreed by the Parties. In any event, the reimbursement will not result in undue additional costs for the Client. The reimbursement is made in the best possible time, and no later than fourteen days from the date on which the Company is informed of the Client's decision.

Note that if the Services ordered were used by the Client and/or the User within the period of fourteen days, it may be considered that the Client waived his/her right of withdrawal, the Service being under Article L.121-21-8 of the Consumer Code, which states "digital content provided on an intangible medium whose performance has begun with Your agreement". However, even in this event, the Company grants the Client a fourteen (14) days period from the order date to exercise his/her right to withdraw and cancel his/her subscription(s).

*In order to respect the consumer, the Company grants the Client a period of fourteen days to cancel the purchase.*

## **11 INTELLECTUAL PROPERTY**

### **11.1 GYMGLISH RIGHTS**

The Site, the Applications and/or the Lesson(s), as well as any element that constitutes them, including text, still or animated images, audio and/or video recordings, logos, domain names, databases, computer programs, etc are fully protected by national and international provisions in terms of copyright and by the laws protecting databases produced by the Company within the meaning of Articles L.341-1 and following

of the Intellectual Property Code.

The Company is the owner of these rights, or these rights are regularly exploited under license. Subscribing to any Subscription does not grant any exclusive right on elements owned by the Company. The Company is the exclusive owner of the logos and trademarks (semi-figurative or not) it filed, and regularly operates logos and trademarks of third parties that may appear on the Site or the Applications.

The Company grants the User a license for using its protected content, detailed in section 11.2 Any not expressly authorized use of protected contents will be liable to prosecution in accordance with the law in force. It is therefore particularly forbidden to reproduce, represent, imitate and/or use in any way possible, every or any portion of the content owned by the Company, without first having received the express permission to do so from the Company.

## 11.2 LICENSE TO USE

The Company grants the User a non-exclusive, non-transferable, revocable and limited License (the License) for the User's personal use without limit of time, which allows the User :

- to download and use Applications;
- to visit the website of the Company;
- to visualize the Lesson(s) of the User's Course;
- to complete the exercises of these Lesson(s);
- to store the User's Lesson(s) for consultation purposes;
- to consult, download and print the Course Modules and the Lessons of the User's Course for the sole purpose of private copying, and use by the copyst in accordance with Article L.122 - 5 paragraph 2 of the Intellectual Property Code.

## 11.3 SHARED CONTENT

By using the Site, You grant to the Company a non-exclusive, royalty-free, perpetual, obligation-free, transferable, irrevocable, and potentially subcontractable right to use the content that You publish on the Site.

You thus authorize the Company to freely use all or part of Your published content to represent, distribute and reproduce it on the Site.

As such, you declare that:

*The Company respects the legal provisions on copyright.*

*Buying a subscription for one of our products authorizes you to use it, but does not allow you to resell it.*

*If you publish content aimed at third parties on the Site, you grant us the right to reproduce it.*

- You are the owner of the content that You post on the Site, or that You can grant the rights and licenses for this content;
- The publication and use of Your content on the Site or through it does not infringe, damage, or violate the rights of third parties, including but not limited to: privacy rights, advertising rights, trademarks and other intellectual property rights;
- You agree to pay any and all fees, royalties in relation to the content which You post on the Site

## 12 LIABILITY

The Company shall not be held responsible for content presented and posted online by Users, especially content of illegal nature.

The User is solely responsible for their personal use of the Site and Applications and for the direct or indirect consequences of this use. It is up to them to use the Site and Applications in accordance with the regulation in force and the recommendations of the CNIL (Commission Nationale de l'Informatique et des Libertés).

The Company has no obligation to screen, control, modify, or remove any published content.

Furthermore, the Company shall not be held responsible for Site or Application failure, any inability to access the Site or Application, or any service malfunction due to the Users' Internet service provider. The same applies for any other reason beyond the Company's control.

The liability of the Company shall not be incurred in the following cases:

- because of technical failures unrelated to the Company, such as communication problems (slowness, interruption, etc.) due to the Client's and/or User's(s) Internet Access Provider;
- because of non-receipt of Lessons by e-mail due to the Client's e-mail configuration or to the use of a mail server that does not deliver the Lessons sent to the User by the Company (particularly if the stated server decided to consider the Lessons of the Company as undesirable e-mails);

*The liability of the Company shall not be incurred in the cases listed (problem with the Internet provider and/or telecoms operator of the User, damage linked to our content, force majeure, etc.).*

- because of misconduct, negligence, omission or default by the Client and/or the User(s) and/or any third party over which the Company has no control or supervision;
- because of damages related to the nature and/or the content of the Lessons;
- because of the non-compliance to the legislation of the country where the User resides or the site is accessed from.
- in any event of force majeure of less than thirty days. If the effects of a force majeure case were to last longer than thirty days from the notification of the force majeure by one of the Parties, the contract may be terminated automatically upon the request of either or both of the Parties, without any right to compensation by either of the Parties.
- in case of damages related to the nature and/or content of the Ads and/or of the messages and feedback on the Marketplace and/or of the actions (or lack of action) of the Users, except where the Company would have been given proper notice of the existence of an illicit or malicious Ad or message as defined by the law, and would not have acted promptly to remove it. Indeed, the Company operates as a host for the Ads on its Marketplace, in accordance with Article 6 of the Law for Confidence in the Digital Economy, dated June 21, 2004;
- and, unless explicitly stated otherwise, in case of any damage related to the acceptance by a User of a Seller Ad on the Marketplace, the Company being a third party with regard to the contract linking the Seller and the User.

The Company reserves the right to refuse any request for a Subscription from a Client with whom a dispute has occurred regarding the payment of all or part of a prior Subscription.

The Company reserves the right to exclude any User from the Marketplace in case of non-compliance with these conditions and/or any dispute regarding Listings.

The Company reserves the right to modify the content of the Services offered on its Site at any time.

## 13 PERSONAL INFORMATION

We take your privacy very seriously. For more information on the protection of personal data, please refer to our Privacy & Use of Information Policy available at the following address: <https://www.gymglish.com/documents/privacy-policy-en-latest.pdf>

*Our Privacy Policy details our commitments relating to privacy.*

## 14 TERMINATION

In case of violation of the above stated Policy by the Client and/or the User(s), the Company reserves the right to automatically terminate the granted License and/or Subscription:

- after a warning has remained without effect for seven (7) days.
- immediately and without notice, in the event of breaches related to intellectual property rights or repeated breaches pertaining to the above stated Terms and Conditions.

*We may terminate the Service in case of non-compliance with our Terms and Conditions.*

In cases of early termination of Service, the Company will under no circumstances reimburse the amounts fully or partially paid by the Client, without prejudice to any legal action that the Company may engage against the Client and/or the User(s), nor any sums due or damages that the Company could accept.

Conversely, in case of violation of the above stated Policy by the Company, the Client will also be allowed to automatically terminate the granted License and/or Subscription, and the amounts owed by the Company between the date of termination and the end date of the Subscription will be returned to the Client.

## 15 SECURITY

The Company is particularly careful about payment data security.

Payments are managed and secured by certified PCI DSS suppliers using SSL technology (Secure Socket Layer) for encrypting payment information during transactions over the network. This ensures the safety and confidentiality of payment information.

The Company never keeps the credit card information of its Clients.

*Your payments are secured by accredited and certified providers.*

## **16 HOST**

The host of the Company is Rackspace Ltd., 5 Millington Road, Hyde Park Hayes, Middlesex, UB3 4AZ, Great Britain. The company Rackspace is certified ISO 27002, ISO 27001, PCI-DSS, SAS 70 Type II and Safe Harbor. The telephone number is +44 20 3131 6381.

*The host of the Company is the company Rackspace Ltd. in Great Britain.*

## **17 NULLIFICATION**

In case one or more of these provisions are invalid or declared as such under any law, regulation or following a definitive decision by a competent jurisdiction, the remaining provisions shall remain in effect.

In such a case, the Company will immediately remove and replace the clause concerned with a legally valid clause.

## **18 SECTION TITLES**

In a section title is deemed to be unclear, the text of the section remains valid and the section title should be considered null.

## **19 APPLICABLE LAW**

These Conditions are subject to French law, in terms of interpretation and application.

In case a problem arises in respect of the interpretation and/or execution hereof, the Parties agree to submit to proceedings of conventional mediation or any other alternative mode to settle the dispute.

In the event the mediation procedure fails, the dispute will be submitted to the competent court as designated by the Regulation of the European Parliament and the Council 1215/2012 of 12 December 2012 on jurisdiction, the recognition and enforcement of judgments in civil and commercial matters.

*This document is subject to French law.*