

MathsWatch

Terms and Conditions

These Terms (defined below) govern your use of **MathsWatch** (defined below).

In consideration of MathsWatch Ltd making **MathsWatch** available to you, you agree to accept these Terms.

You should print a copy of these Terms or save them to your computer for future reference.

1. INTERPRETATION

1.1 In these Terms, unless the context otherwise requires, the following expressions shall have the following meanings:

Authorised User means you, the individual who is (as the case may be): (i) a teacher or a member of staff engaged by an Organisation; (ii) a student enrolled at an Organisation; or (iii) the Parent of a student enrolled at an Organisation and "the Authorised User" means the relevant Authorised User.

Licence Period means Licence Period as defined in Clause 11.1

Fees mean the relevant Product fees payable by the Organisation to access the Product on **MathsWatch**.

Intellectual Property Rights mean all patents, rights to inventions, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, database right, topography rights, moral rights, rights in confidential information (including knowhow and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Organisation means the school, college or similar institution or entity engaged in the field of education that is granted access to **MathsWatch**, and who has purchased the Product from MathsWatch Ltd. For the avoidance of doubt, where an organisation consists of a number of individual entities, branches and/or a federation, each entity, branch or entity within that federation shall be deemed as an individual Organisation unless otherwise agreed in writing by MathsWatch Ltd.

MathsWatch means MathsWatch Ltd's online learning platform.

MathsWatch Ltd, we, us, or our, means or mean (as the context requires) MathsWatch Ltd, The Fort Offices, Artillery Business Park, Oswestry, Shropshire, SY11 4AD, United Kingdom.

Parent means a parent or guardian of an Authorised User who is a student.

Personal Data means information about an individual person that can identify that individual person (e.g. name, email address or age).

Product means the MathsWatch product purchased by an Organisation for the use by its Authorised Users which are accessed and used via MathsWatch.

Product Specific Terms mean the licence and usage terms and conditions relating to the Product.

Software means the software provided by us which enables You to use and access MathsWatch and the Product via MathsWatch.

Terms mean these terms and conditions.

You or Your means the Organisation and the Authorised Users unless the context requires otherwise in which case, "You" or "Your" will mean the Organisation.

- 1.2 Headings in these conditions shall not affect their interpretation.
- 1.3 Words importing any gender shall include any other gender.
- 1.4 Words importing the singular number shall include the plural number and vice versa including the definitions referred to in Clause 1.1 hereof.
- 1.5 Where any word or expression is defined in these Terms, the definition shall extend to all grammatical variations and cognate expressions of the word or expression so defined.
- 1.6 All references to provisions of statutes include such provisions as amended, modified or re-enacted.
- 1.7 The Organisation shall procure that each and every of its Authorised Users complies with the provisions of these Terms. The Organisation shall be liable for any breach of these Terms by its Authorised Users as though the breach was committed by the Organisation.

2. LICENCE

2.1. In consideration of the Fees paid by the Organisation to MathsWatch Ltd, MathsWatch Ltd grants to You, a non-exclusive licence to access and use the Product on one educational site (max. of 1000 users per site) via MathsWatch during the Licence Period. In this regard, You are entitled to use the Software (in object code form) to access the Product and to use MathsWatch as part of the Organisation's internal teaching tools and teaching resources.

2.2. Notwithstanding Clause 2.1, You must not:

2.2.1. sub-license or assign the benefit or burden of the licence set out in Clause 2.1 in whole or in part to anyone;

2.2.2. attempt to duplicate, modify, disclose or distribute any portion of the Software;

2.2.3. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any of the Software, except as is allowed by any applicable law which is incapable of exclusion by agreement between MathsWatch Ltd and you;

2.2.4. transfer, temporarily or permanently, any rights or obligations under these Terms; or

2.2.5. attempt to obtain, or assist others in obtaining access to MathsWatch, the Software, and the Product other than as provided under Clause 2.

3. ACCESSING MATHSWATCH AND THE PRODUCT

3.1. You acknowledge that You will only be able to access the Product on MathsWatch during the Licence Period and that Your access and use of the Product will be governed by the Product Specific Terms. Without prejudice to the foregoing, You must not:

3.1.1. systematically make printed or electronic copies of content and/or materials in the Product for any purpose in either print or electronic format apart from within your Organisation during the Licence Period;

3.1.2. remove or alter the copyright notices or other means of identification or disclaimers as they appear in the Product;

3.1.3. display or distribute any part of the Product on any electronic network, including without limitation the Internet and the World Wide Web, where access is possible by anyone not an Authorised User;

3.1.4. permit anyone other than the Authorised Users to access or use the Product including any content and material making up the Product; and/or

3.1.5. use the Product or any part of the Product for any commercial use other than as teaching and learning resources within the Organisation.

3.2. If you are purchasing the Product on behalf of your Organisation, you warrant that you have the authority to do so and agree to the Product Specific Terms on behalf of your Organisation.

3.3. Your Organisation will need to appoint you as its Authorised User by creating a user account for you before you can access MathsWatch.

3.4. To access and use the Product, You will need to log into Your MathsWatch account using the relevant login details.

3.5. Subject to earlier termination pursuant to these Terms, Your access to MathsWatch will cease when the Licence Period for the Product expires.

4. YOUR OBLIGATIONS

4.1. The Organisation is responsible for the selection of the Product it purchases and whether the Product meets its and its Authorised Users requirements.

4.2. You agree not to make available Your username and/or password to anyone. If there has been a disclosure of Your username and/or password, You agree to notify us promptly of such disclosure, so that we can take appropriate security measures.

4.3. If we suspect that a breach of Clauses 4.7 and 8.2 have occurred or is likely to occur, we may, without giving notice and liability to You, suspend Your access to MathsWatch and/or the Product.

4.4. If You are a teacher or an Organisation, You acknowledge that You are solely responsible for the appropriate use and adaptation of the Product for the use by Your student users.

4.5. You agree that You will promptly notify us of any errors or inaccuracies which relate to the Product. In this regards, please contact us using www.MathsWatch.co.uk/contact.

4.6. Unless otherwise agreed in writing by MathsWatch Ltd, You are solely responsible for configuring Your computer devices in order to access MathsWatch and the Product, and to provide for Your own virus protection software.

4.7. You warrant that any Personal Data which You provide to MathsWatch Ltd complies fully with all relevant data protection laws including the Data Protection Act 2018 and You agree to indemnify and keep MathsWatch Ltd indemnified against breach by You of such data protection laws.

4.8. The Organisation agrees to indemnify and keep us indemnified for any losses, damages, fines arising from or which are connected to any breach by it and/or its Authorised Users of Clauses 4.7 and 8.2.

5. OUR OBLIGATIONS

5.1. We will:

5.1.1 use all reasonable endeavours to ensure that the Product and User Materials are accessible on MathsWatch;

5.1.2 provide the Organisation and its Authorised Users with general login credentials and the application Authorised Users with the ability to create usernames and passwords for other Authorised Users; and

5.1.3 (if we have agreed to do so in writing) provide You with training and help notes on how to use MathsWatch;

6. WITHDRAWAL OF PRODUCTS

6.1 We reserve the right at any time to withdraw the Product including any components within the Product (e.g. an activity) for any reason including:

6.1.1 if we no longer retain the right to publish such material; or

6.1.2 if in our sole discretion, we believe that such material may infringe the Intellectual Property Rights of third parties or is defamatory, obscene, unlawful or otherwise objectionable.

In the circumstances above, we shall notify the Organisation of such withdrawal as soon as reasonably practicable.

6.2 On receipt of the notice referred to in Clause 6.1, the Organisation shall promptly inform its Authorised Users and You agree to immediately cease all use of the withdrawn material and shall comply with our instructions with respect to the deletion and/or removal of such withdrawn material.

7. DATA PROTECTION AND PRIVACY

7.1 In the course of You accessing MathsWatch and the Product, and us complying with our obligations to You, it is necessary for You to provide to us and for us to collect and process Personal Data (e.g. name, email address and year group) from You.

7.2 The terms governing the supply by You and use by us of Personal Data is set out in our Privacy Policy and You agree to be bound by the terms set out in our Privacy Policy. The statement also sets out MathsWatch's commitment to protecting your personal information and provides guidance on your rights under the General Data Protection Regulation 2018.

7.3 Our Privacy Policy will be deemed to be part of these Terms.

7.4 To the extent that we process any Personal Data for the Organisation, we will process that Personal Data in accordance with the Organisation's reasonable instructions which are compatible with our carrying out our obligations under these Terms. We will take such organisational and technical measures against the unauthorised or unlawful processing of that Personal Data and against accidental loss or destruction of, or damage to, that Personal Data as we take from time to time in relation to Personal Data which we process for our own purposes.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 As between You and MathsWatch Ltd, You acknowledge that MathsWatch Ltd owns all Intellectual Property Rights in MathsWatch, the Software and the Product. Except as expressly stated in these Terms and the Product Specific Terms, MathsWatch Ltd does not grant You any rights to or in any Intellectual Property Rights or any other rights or licences.

8.2 If You become aware of any Intellectual Property Rights infringement or potential Intellectual Property Rights Infringement involving MathsWatch, the Software and/or the Product (e.g. an unauthorised third party is using MathsWatch or if You get a letter from a third party stating that the Software infringes such third party's Intellectual Property Rights) You must inform us promptly. We will:

8.2.1 in our absolute discretion, determine what action if any shall be taken in respect of the matter;

8.2.2 have sole control over and shall conduct any action as we deem necessary; and

8.2.3 pay all costs in connection with that action and we shall be entitled to all damages and other sums which may be paid or awarded as a result of any such action. You agree to (at our cost) provide us with any assistance which we may request.

8.3 In the defence or settlement of a claim that MathsWatch, the Software and/or the Product infringes third party Intellectual Property Rights ('Infringing Items'), we may at our discretion:

- 8.3.1 obtain for You the right to continue using the Infringing Items;
- 8.3.2 replace or modify the Infringing Items with equivalent items so that they become non-infringing; or
- 8.3.3 if such remedies are not reasonably available, withdraw the Infringing Items and we will refund any of the Fees paid by the Organisation (less a reasonable sum in respect of the Organisation's and its Authorised Users' use of the Infringing Items).
- 8.4 Clauses 8.2 and 8.3 set out Your sole and exclusive rights and remedies, and our entire obligations and liability, for infringement of Intellectual Property Rights.

9 WARRANTIES

- 9.1 Subject to the other provisions in these Terms and to our right to carry out scheduled maintenance, during the period when You have access to MathsWatch, we warrant to the Organisation that we will use reasonable endeavours to ensure that MathsWatch is available to the Organisation.
- 9.2 We do not warrant that the use of MathsWatch and/or the Product will be uninterrupted or error-free. We may also carry out scheduled maintenance from time to time.
- 9.3 The Organisation accepts responsibility for the selection of MathsWatch and the Product to achieve its intended results.
- 9.4 Except as expressly stated in these Terms, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of MathsWatch, the Product and the Software which might otherwise be implied into, or incorporated in, these Terms whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

10 LIABILITY

- 10.1 This Clause 10 sets out the entire financial liability of MathsWatch Ltd (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to You including those arising from breach of contract, use made by You of MathsWatch, the Software and/or the Product, and representation, statement or tortious act or omission (including negligence) arising under or in connection with Your use of MathsWatch, the Software and/or the Product.
- 10.2 Nothing in these Terms excludes our liability for death or personal injury caused by our negligence; or for fraud or fraudulent misrepresentation.
- 10.3 Subject to Clause 10.2 we shall not be liable to You for any:
- 10.3.1 indirect, consequential and/or special loss or damage;
 - 10.3.2 loss of profit (direct or indirect);
 - 10.3.3 loss of revenue, loss of teaching time or loss of business (in each case whether direct or indirect);
 - 10.3.4 loss of goodwill, loss of reputation or loss of opportunity (in each case whether direct or indirect);
 - 10.3.5 loss of anticipated saving or loss of margin (in each case whether direct or indirect);
 - 10.3.6 wasted management, operational or other time (in each case whether direct or indirect);
 - 10.3.7 loss of any data, content and/or material (in each case, whether direct or indirect);

10.3.8 liability of any of the other parties to third parties (whether direct or indirect), arising out of or in connection with these Terms and/or in connection with Your use of MathsWatch, the Software and/or the Product, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including (without limitation) by negligence and also including (without limitation) any liability arising from a breach of, or a failure to perform or defect or delay in performance of, any of our obligations under these Terms.

10.4 Subject only to Clause 10.2 but without prejudice to Clause 10.3, our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the Fees paid by You to us during the 12 months preceding the date on which the claim arose. You acknowledge that this limitation is reasonable.

10.5 As Products are purchased by the Organisation and made available by the Organisation to its Authorised Users, you as an Authorised User of your Organisation, irrevocably agree not to bring or threaten to bring any claims or proceedings directly against MathsWatch Ltd. Any claims, proceedings, problems, dissatisfaction or issues which you have should be brought or raised directly with your Organisation. If any Authorised Users bring or threaten to bring any claims or proceedings against MathsWatch Ltd, the Organisation shall indemnify and keep MathsWatch Ltd indemnified against any costs, losses, damage and/or expenses incurred by MathsWatch Ltd.

11 TERM AND TERMINATION

11.1 Unless expressly stated otherwise in the Product Specific Terms, you agree that the licence to access the Product shall automatically run for a period of 12 months ("Licence Period").

11.2 Without prejudice to any rights which have accrued under these Terms, You or MathsWatch Ltd may terminate these Terms if the other party:

11.2.1 is in material breach of any of its obligation under these Terms and if such breach is remediable, fails to remedy that breach within 7 days of that party being notified in writing of the breach; or

11.2.2 is made bankrupt, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if the other party ceases or threatens to cease to trade, or if the other party makes an assignment for the benefit of, or a composition with its creditors or other arrangement of similar import or has a receiver, administrative receiver, administrator or a similar officer appointed over all or a substantial part of its assets, or if a petition is passed or an order is made by a court of competent jurisdiction or resolution is passed for the winding up of the other party (other than for the purpose of a bona fide solvent reconstruction or amalgamation) or any similar circumstances arise in any jurisdiction.

12 EFFECT OF TERMINATION

12.1 On expiry or termination of these Terms or Your right to use MathsWatch for any reason and subject to any express provisions set out elsewhere in these Terms:

12.1.1 all outstanding sums payable by the Organisation to MathsWatch Ltd shall immediately become due and payable;

12.1.2 all rights and licences granted to You to use the Software and MathsWatch to these Terms shall cease; and

12.2 The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

12.3 If your access to the Product ceases (e.g. the Licence Period has expired), You will no longer be able to access the Product and MathsWatch Ltd reserves the right to delete your account.

13 FORCE MAJEURE

13.1 We will have no liability to You if we are prevented from, or are delayed in performing our obligations due to any circumstances and/or reasons which are outside of our control. These circumstances and reasons include strikes, lock-outs or other industrial disputes (whether involving the workforce of MathsWatch Ltd 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, sanctions, accident, breakdown of plant or machinery, fire, flood, storm, default of suppliers or subcontractors and/or non-performance of any services by MathsWatch Ltd's suppliers, banks or subcontractors.

14 MAINTENANCE

14.1 If You are unable to access MathsWatch, You must first ascertain whether the inability to access MathsWatch is caused by a failure on the part of Your device. If the fault lies with MathsWatch and not Your device, You must:

14.1.1 where You are an Authorised User which has not been appointed by Your Organisation to act as its nominated representative to interact with MathsWatch Ltd, inform Your Organisation's nominated representative immediately and he/she will notify MathsWatch Ltd; and

14.1.2 where You are Your Organisation's nominated representative, contact MathsWatch Ltd promptly using the following details: MathsWatch Ltd,
The Fort Offices, Artillery Business Park
Oswestry, Shropshire, SY11 4AD
Email: support@MathsWatch.com

14.2 Upon receiving Your nominated representative's report, MathsWatch Ltd shall use reasonable endeavours to resolve and rectify the problem to allow You to access MathsWatch.

14.3 Where it is subsequently established that the fault does not lie with MathsWatch but with Your device or internet services, we reserve the right to charge the Organisation a reasonable administrative fee.

15 NOTICES

15.1 All notices to be given under these Terms shall be in writing and shall either be delivered personally or sent by courier and shall be deemed duly served:

15.1.1 in the case of a notice delivered personally, at the time the same is left at the address of, or handed to a representative of, the party to be served; and

15.1.2 in the case of courier, two clear business days after the date of despatch.

16 GENERAL PROVISIONS

16.1 These Terms constitutes the whole agreement between MathsWatch Ltd and You and supersedes all previous agreements between MathsWatch Ltd and You relating to Your use of MathsWatch. Nothing in these Terms shall limit or exclude any liability for fraud.

16.2 We may amend these Terms from time to time. If we have to revise these Terms, we will give You at least one month's written notice of any changes to these Terms before they take effect. If You do not wish to accept the changes, You can choose to cancel the contract in respect of the Product and we will refund You any portion of the Fees paid by You (less a reasonable sum in respect of the Organisation's and its Authorised Users' use of the Product).

16.3 A waiver of any right under these Terms is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

16.4 If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

16.5 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

16.6 To the extent that it is applicable and legally enforceable, in the event of any inconsistencies between the provisions set out in these Terms and those in the terms and conditions governing the purchase of the Product from MathsWatch Ltd, the parties agree that the provisions in these Terms will prevail.

17 GOVERNING LAW AND JURISDICTION

17.1 These Terms of Use are governed and will be interpreted in accordance with English law.

17.2 The English courts shall have non-exclusive jurisdiction to settle any claim or dispute which might arise out of or in connection with these Terms of Use.

17.3 If any part of the Terms of Use is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of the Terms of Use which will continue to be valid and enforceable to the fullest extent permitted by applicable law.

17.4 We will only use your personal information as set out in our Privacy Notice.