

# TERMS AND CONDITIONS OF USE

Last updated: 27 July 2021

## 1. About the Application

1. 1. Welcome to Inner Genius (the '**Application**'). The Learning and Communication Profile and Related Programs (the '**Services**').
1. 2. The Application is operated by TPC Global PTY. LIMITED (ABN 47 621 387 59) (TPC Global). Access to and use of the Application, or any of its associated Products or Services, is provided by TPC Global. Please read these terms and conditions (the '**Terms**') carefully. By using, browsing and/or reading the Application, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Application, or any of its Services, immediately.
1. 3. TPC Global reserves the right to review and change any of the Terms by updating this page at its sole discretion. When TPC Global updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.

## 2. Acceptance of the Terms

You accept the Terms by using or browsing the Application. You may also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by TPC Global in the user interface.

## 3. Purchase to use the Services

3. 1. In order to access the full Services, you must first complete the initial free section then purchase the full service through the Application (the '**Full Service**') and pay the applicable fee for the selected full service (the '**Fee**'), as applicable.
3. 2. In purchasing the full service, you acknowledge and agree that it is your responsibility to ensure that the full service purchased is suitable for your use.
3. 3. Prior to your purchase of the full service, you will be required to register details through the Application before you can access the Services (the '**Registration**').
3. 4. As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including:

- (a) Email address
  - (b) Preferred username
  - (c) Mailing address
  - (d) Telephone number
  - (e) Password
  - (f) Company Name
- 3.5.** You warrant that any information you give to TPC Global in the course of completing the registration process will always be accurate, correct and up to date.
- 3.6.** Once you have completed the registration process, you will be a registered to use the Application (**'Registered Member'**) and agree to be bound by the Terms. As a Registered Member you will be granted immediate access to the Services from the time you have completed the registration process.
- 3.7.** You may not use the Services and may not accept the Terms if:
- (a) you are not of legal age to form a binding contract with TPC Global; or
  - (b) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.

#### **4. Your obligations as a Registered Member**

**4.1.** As a Registered Member, you agree to comply with the following:

- (a) you will use the Services only for purposes that are permitted by:
  - (i) the Terms; and
  - (ii) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;
- (b) you have the sole responsibility for protecting the confidentiality of your registration. Use of your registration by any other person may result in the immediate cancellation of the Services;
- (c) any use of your registered access to services by any other person, or third parties, is strictly prohibited. You agree to immediately notify TPC Global of any unauthorised use of your registration or any breach of security of which you have become aware;

- (d) access and use of the Application is limited, non-transferable and allows for the sole use of the Application by you for the purposes of TPC Global providing the Services;
- (e) you will not use the Services or the Application in connection with any commercial endeavours except those that are specifically endorsed or approved in writing by the management of TPC Global;
- (f) you will not use the Services or Application for any illegal and/or unauthorised use which includes collecting email addresses of users by electronic or other means for the purpose of sending unsolicited email or unauthorised framing of or linking to the Application;
- (g) you agree that commercial advertisements, affiliate links, and other forms of solicitation may be removed from the Application without notice and may result in termination of the Services. Appropriate legal action will be taken by TPC Global for any illegal or unauthorised use of the Application; and
- (h) you acknowledge and agree that any automated use of the Application or its Services is prohibited.

## 5. Payment

- 5. 1. Where the option is given to you, you may make payment of the Services Fee by way of:
  - (a) Credit Card Payment ('**Credit Card**')
- 5. 2. All payments made in the course of your use of the Services are made using Stripe. In using the Application, the Services or when making any payment in relation to your use of the Services, you warrant that you have read, understood and agree to be bound by the Stripe terms and conditions which are available on their Application.
- 5. 3. You acknowledge and agree that where a request for the payment of the Services Fee is returned or denied, for whatever reason, by your financial institution or is unpaid by you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the Services Fee .
- 5. 4. You agree and acknowledge that TPC Global can vary the Services Fee at any time and that the varied Services Fee will come into effect immediately.

## 6. Refund Policy

TPC Global will only provide you with a refund of the Services Fee in the event they are unable to continue to provide the Services or if the management of TPC Global makes a

decision, at its absolute discretion, that it is reasonable to do so or is directed to do so under the circumstances.

Any claims for misprinted/damaged/defective items must be submitted, with supporting photo, within 30-days after the product has been received. For packages lost in transit, all claims must be submitted no later than 3-days after the estimated delivery date. Claims deemed an error on our part are covered at our expense.

If you provide an address that is considered insufficient by the courier, the shipment will be returned to us. You will be liable for reshipment costs once we have confirmed an updated address with you (if and as applicable). Shipments that go unclaimed are returned to us and you will be liable for the cost of a reshipment to yourself (if and as applicable). You hereby agree that any returned orders due to the wrong shipping address or a failure to claim the shipment won't be available for reshipping and will be donated to charity (without us issuing a refund).

TPC Global does not accept returns of sealed goods, such as but not limited to used clothing, which are not suitable for return due to health or hygiene reasons. You hereby agree that any returned orders, deemed as used clothing, will not be accepted for return or reshipping and will be disposed of.

TPC Global does not refund orders for buyer's remorse. Returns of products, such as but not limited to, incorrectly ordering print labelling, used clothing, and size exchanges are to be offered at your expense and discretion. If you choose to accept replacements or require size exchanges you would need to place a new order at your expense in another size.

A photo is required with your return request as evidence of damage and your request will undergo an evaluation to verify whether the product was used or destroyed in some way, even if partial. In these cases, a refund will not be possible.

Within the EU and according to Article 16(c) and (e) of the Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, the right of withdrawal or return may not be provided for:

- a. the supply of goods that are made to the consumer's specifications or are clearly personalized;
- b. sealed goods which were unsealed after delivery and thus aren't suitable for return due to health protection or hygiene reasons

Therefore, TPC Global reserves rights to refuse returns at its sole discretion. This Policy shall be governed and interpreted in accordance with the English language, regardless of any translations made for any purpose whatsoever.

## 7. Copyright and Intellectual Property

**7. 1.** The Application, the Services and all of the related products of TPC Global are subject to copyright. The material on the Application is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Services and compilation of the Application (including but not limited to text, graphics, logos, button icons, video images, audio clips, Application, code, scripts, design elements and interactive features) or the Services are owned or controlled for these purposes, and are reserved by TPC Global or its contributors.

**7. 2.** All trademarks, service marks and trade names are owned, registered and/or licensed by TPC Global, who grants to you a worldwide, non-exclusive, royalty-free, revocable license to use your individual profile and individual profile badge within:

- (a) the terms and conditions of the Application;
- (b) your device's cache memory and copy and store your individual profile and your individual profile badge; and
- (c) print or download pages from the Application of your individual profile and your individual profile badge for your own personal and non-commercial use.

TPC Global does not grant you any other rights whatsoever in relation to the Application or the Services. All other rights are expressly reserved by TPC Global.

**7. 3.** TPC Global retains all rights, title and interest in and to the Application and all related Services. Nothing you do on or in relation to the Application will transfer any:

- (a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
- (b) a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
- (c) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process),

to you.

- 7.4.** You may not, without the prior written permission of TPC Global and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Application, which are available for re-use or are in the public domain.

## **8. Privacy**

TPC Global takes your privacy seriously and any information provided through your use of the Application and/or Services are subject to TPC Global's Privacy Policy, which is available on the Application and at [www.id9impact.com](http://www.id9impact.com).

## **9. General Disclaimer**

- 9.1.** Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- 9.2.** Subject to this clause, and to the extent permitted by law:
- (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
  - (b) TPC Global will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- 9.3.** Use of the Application and the Services is at your own risk. Everything on the Application and the Services is provided to you "as is" and "as available" without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of TPC Global make any express or implied representation or warranty about the Services or any products or Services (including the products or Services of TPC Global) referred to on the Application. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:

- (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
- (b) the accuracy, suitability or currency of any information on the Application, the Services, or any of its Services related products (including third party material and advertisements on the Application);
- (c) costs incurred as a result of you using the Application, the Services or any of the products of TPC Global; and
- (d) the Services or operation in respect to links which are provided for your convenience.

## **10. Competitors**

If you are in the business of providing similar Services for the purpose of providing them to users for a commercial gain, whether business users or domestic users, then you are a competitor of TPC Global. Competitors are not permitted to use or access any information or content on our Application. If you breach this provision, TPC Global will hold you fully responsible for any loss that we may sustain and hold you accountable for all profits that you might make from such a breach.

## **11. Liability**

### **12. Limitation of liability**

- 11. 1.** TPC Global's total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services to you.
- 11. 2.** You expressly understand and agree that TPC Global, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

## **12. Termination of Application Use**

- 12. 1.** The Terms will continue to apply until terminated by either you or by TPC Global as set out below.
- 12. 2.** You may terminate the Application use at any time.

**12.3.** TPC Global may at any time, terminate the Terms with you if:

- (a) you do not successfully pay the Registration Fee;
- (b) you have breached any provision of the Terms or intend to breach any provision;
- (c) TPC Global is required to do so by law;
- (d) the provision of the Services to you by TPC Global is, in the opinion of TPC Global, no longer commercially viable.

**12.4.** Subject to local applicable laws, TPC Global reserves the right to discontinue or cancel your access to the Application at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Application or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts TPC Global's name or reputation or violates the rights of those of another party.

### **13. Indemnity**

**13.1.** You agree to indemnify TPC Global, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:

- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with Your Content;
- (b) any direct or indirect consequences of you accessing, using or transacting on the Application or attempts to do so; and/or
- (c) any breach of the Terms.

### **14. Dispute Resolution**

**14.1.** Compulsory:

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

**14.2.** Notice:

A party to the Terms claiming a dispute ('**Dispute**') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

**14.3.** Resolution:



On receipt of that notice ('**Notice**') by that other party, the parties to the Terms ('**Parties**') must:

- (a) Within 30 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (b) If for any reason whatsoever, 30 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Sydney body for mediation or his or her nominee;
- (c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- (d) The mediation will be held in Level 20, 201 Sussex Street, Sydney, New South Wales, 2000, Australia.

#### **14.4. Confidential**

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

- 14.5. Termination of Mediation: If 30 have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

#### **15. Venue and Jurisdiction**

The Services offered by TPC Global is intended to be viewed by residents of Australia or anywhere in the world. In the event of any dispute arising out of or in relation to the Application, you agree that the exclusive venue for resolving any dispute shall be in the courts of New South Wales, Australia.

#### **16. Governing Law**

The Terms are governed by the laws of New South Wales, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of New South Wales, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

**17. Independent Legal Advice**

Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

**18. Severance**

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.

**Approved by**

Signature: 

Full Name: CATHERINE MATTISKE

Date: 27 JULY 2021