

## Terms and Conditions for Progress Test 2021, Language Centre, University of the Arts London

### 1. Introduction and interpretation

1.1 These Terms and Conditions (“**Terms**”) apply to the UAL Progress Test provided by University of the Arts London (“**we**” or “**UAL**”) at its Language Centre. These Terms do not apply to the English Language programmes, Languages, Arts & Culture courses or Pre-sessional English programmes also offered by the Language Centre, University of the Arts London.

1.2 In these Terms, the following expressions have the following meanings:

“**Booking**” means your application for a place on the Test, made by submitting your Booking Form;

“**Booking Form**” is the online form supplied by us and completed by you;

“**Confirmation**” has the meaning given in paragraph 3.2;

“**Contract**” has the meaning given in paragraph 3.2;

“**Data Protection Laws**” means the European Union Data Protection Directive 95/46/EC, any national laws or regulations implementing that Directive, the General Data Protection Regulation (EU 2016/679) (“**GDPR**”) (when applicable) and any national laws or regulations constituting a replacement or successor regime to GDPR;

“**Event Outside Our Control**” means any event or circumstances beyond our reasonable control such as: strike, lock-outs or other industrial action by third parties; strikes, lock-outs or other industrial action by our employees; civil commotion, riot invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, adverse weather, subsidence, or other natural disaster or “act of god”; failure of public or private telecommunications networks; pandemic, epidemic and any restrictions or requirements that might be imposed by any Government, regulator or relevant authority, and will include, for example, any disruption caused as a result of COVID-19; and/or decisions made by any Government or relevant authority or regulator that impact on our ability to perform our obligations under the Contract;

“**Fees**” means the exam fees and administration fees payable by you in relation to the Test;

“**Personal Data**” means any information relating to an identified or identifiable person (“**data subject**”); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

“**Privacy Policy**” means our policy on the collection and use of your personal data in force from time to time and that is available to view at <https://www.arts.ac.uk/privacy-information>;

“**Regulations**” has the meaning given in paragraph 3.3(b);

“**Sensitive Personal Data**” means data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, data concerning health or data concerning a natural person’s sex life or sexual orientation;

“**Services**” means the teaching services and related teaching materials that we will provide in relation to the Test;

“**Test**” means the UAL Progress Test, or such alternative progress test that you and we agree that you will undertake;

“**VLE**” means the online virtual learning environment that we will use to facilitate delivery of the Test from time to time; and

“**Website**” means our website at <https://www.arts.ac.uk>

### 2. About us and how to contact us

2.1 We are University of the Arts London, a higher education corporation and exempt charity for the purposes of the Charities Act 2011. Our main place of business is at 272 High Holborn, London, WC1V 7EY.

- 2.2 You can contact us at this address, or via the link on the Language Centre section of the Website: <https://www.arts.ac.uk/study-at-ual/language-centre> or by emailing progress-test@arts.ac.uk.

### **3. Reservation and confirmation**

- 3.1 When you complete and submit your Booking Form you are making a purchase from UAL of the Test referred to in the Booking Form and in accordance with these Terms.
- 3.2 Your Booking is accepted at the point of payment ("**Confirmation**"), at which point and on which date a legally binding contract will come into existence between UAL and you for the supply by UAL to you of the Services (and any related services and/or goods) (the "**Contract**").
- 3.3 The terms of the Contract are set out in:
- (a) these Terms; and
  - (b) the UAL student rules and regulations as applicable to you, available online at <https://www.arts.ac.uk/study-at-ual/academic-regulations/student-regulations/> and as amended from time to time (the "**Regulations**").
- 3.4 The Terms and the Regulations constitute the entire agreement between us and you. You acknowledge that you have not relied on any statement, promise or representation made by us or on our behalf which is not set out in these Terms or the Website.
- 3.5 The Contract will commence on the date of the Confirmation and continue until completion of the Test, unless it is cancelled earlier in accordance with these Terms.

### **4. Our Services**

- 4.1 We will use reasonable endeavours to ensure that the Services meet the description set out on our Website in all material respects.
- 4.2 We will use reasonable endeavours to comply with the timetable for the delivery of the Services which is specified on the Website or otherwise agreed between us. We usually aim to contact you with the results of your Test within 10 working days, but in any event no later than 15 working days. However, you agree that dates, modes, and locations for delivery of the Services may be subject to changes from time to time.
- 4.3 We may make any changes to our Services and/or Test or take any steps:
- (a) which are necessary due to an Event Outside Our Control;
  - (b) to comply with any applicable law, regulation, safety requirement, recommended government rules and/or guidance relating to any disease or public health matter or in response to regulatory changes;
  - (c) in order to improve the quality of educational services (for example, in order to meet the latest requirements of a commissioning or accrediting body, in order to bring the Contract in line with best practice activities across the Higher Education sector, in response to student feedback, and/or due to a lack of student demand) provided such changes do not materially affect the nature or quality of the Services and/or the Test;
- We shall notify you in any such event.
- 4.4 We will provide the Services with reasonable care and skill.
- 4.5 All intellectual property rights (of whatever nature) in, or arising out of or in connection with, the Services (including any training or other materials) shall be owned by us.

### **5. Your Obligations**

- 5.1 You agree to:
- (a) comply with the Regulations;
  - (b) comply with all mandatory regulations relating to the Test which will be provided to you on the day of the Test;

- (c) maintain an immigration status that entitles you to undertake the Test;
- (d) attend your scheduled Test date on time;
- (e) provide the equipment that we advise you on our Website that you will need in connection with the Test; and
- (f) participate in the Test in accordance with UAL policies and procedures.

## **6. Immigration**

6.1 You agree that:

- (a) you are responsible for obtaining and maintaining any immigration status you require to undertake the Test. More information about student immigration can be found on the UK Visas and Immigration website at: <https://www.gov.uk/government/organisations/uk-visas-and-immigration>; and
- (b) you acknowledge that if you fail to comply with any immigration conditions, we may be obliged to report this to UK Visas and Immigration ("UKVI") in order to comply with reporting obligations.

6.2 On occasion, we may need to contact the UK Home Office to clarify details on any outstanding visa applications and previous immigration history. You accept and acknowledge that this may involve us giving information about you to the UK Home Office.

## **7. Your Legal Cancellation Rights**

7.1 You have a legal right under the Consumer Contract (Information, Cancellation and Additional Charges) Regulations 2013 to cancel the Contract within 14 days (the "**Cancellation Period**") without giving any reason. The Cancellation Period will expire 14 days from the date of our Confirmation. To cancel you must inform us by a clear statement by writing to us at Language Centre, 272 High Holborn, London WC1V 7EY or by emailing us at [language-centre@arts.ac.uk](mailto:language-centre@arts.ac.uk).

7.2 We will not start providing the Services to you during the Cancellation Period unless you expressly request us to do so.

7.3 If you cancel in accordance with paragraph 7.1, we will refund the Fees you have paid within 14 days of the date on which you inform us that you wish to cancel. However if you have expressly requested that we start providing the Services within the Cancellation Period then we will be entitled to charge you a reasonable sum for the Services based on the proportion of the Test you have undertaken and the overall cost of the Test and we can deduct this sum from any refund payable to you.

7.4 Paragraphs 8 and 9 of these Terms set out your other rights to cancel the Contract which are in addition to and do not affect your rights under this paragraph 7.

## **8. Your other Cancellation rights**

8.1 You may cancel the Contract by telling us in writing before the first day of the Test.

8.2 If you tell us about your cancellation after expiry of the Cancellation Period referred to in paragraph 7.1 and on or before the first day of the Test, you will not receive any refund of the Fees.

8.3 You may cancel the Contract if we break the Contract in a material way and do not correct the situation within 14 days of you asking us in writing to do so, in which case we will refund any Fees that you have paid.

## **9. Transfers and leaving after the start of a Test**

9.1 After you have started a Test, you may not transfer onto an alternative Test.

9.2 If, after starting a Test and after the end of the Cancellation Period referred to in paragraph 7.1, you leave the Test after it has started for any reason, you will not be entitled to any refund or credit of the Fees.

9.3 If you do not arrive to take the Test, you will not receive any refund of the Fees.

## **10. Our cancellation rights**

10.1 We may cancel a Test no later than 7 days before a Test starts if there is low demand for that Test in which case you can either:

- (a) transfer onto an available alternative test (and pay any applicable additional fees); or
- (b) cancel the Contract and receive a full refund of the Fees you have paid.

10.2 We may cancel the Contract if an Event Outside Our Control prevents us providing the Services when we are supposed to for 4 weeks or more (see paragraph 16) or if we lose our right for the purposes of relevant legislation to provide the Services, in which case we will refund any Fees you have paid.

10.3 We may cancel the Contract or suspend you from the Test if:

- (a) you do not pay the Fees when you are supposed to;
- (b) your actions are in breach of the Regulations, including the Disciplinary Code for Students;
- (c) it comes to our attention that you do not have an immigration status entitling you to undertake the Test; or
- (d) you break the Contract in a material way and, where the situation is capable of being corrected, you do not correct it within 14 days of us asking you in writing to do so.

## **11. Fees and payment**

11.1 The Fees payable for the Test are published by us on the Website and must be paid by you upon application to the Test.

11.2 All Fees are payable in full by credit or debit card in pounds sterling via UAL's eStore at the time you make your booking for the Test. For the avoidance of doubt, in the event that UAL is not able to accept your booking for any reason and as a result we do not provide you with the Confirmation in accordance with paragraph 3.2, we will reimburse you the Fees you have paid in accordance with this paragraph 11.2 without undue delay.

11.3 If you do not pay the Fees to us in accordance with the Contract you will not be entitled to start the Test.

11.4 If you miss any of the Test because of absence, illness, or because you are late starting the Test you will not be entitled to any reduction, credit, or refund of the Fees.

## **12. Our Liability to You**

### **YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS PARAGRAPH**

12.1 If we fail to comply with the Contract, we are responsible for loss or damage you suffer that is a foreseeable result of our breach of the Contract or our negligence, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of our breach or if they were contemplated by you and us at the time we entered into the Contract.

12.2 We do not exclude or limit in any way our liability for:

- (a) death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) any other liability that cannot be excluded by law.

12.3 Except as set out in paragraph 12.2 above, in no event shall our liability to you arising out of or in connection with any Contract (whether caused by our negligence or our breach of the Contract) exceed the total amount of the Fees which you have paid to us under that Contract.

12.4 This paragraph 12 shall survive termination of the Contract.

### **13. Online Delivery**

- 13.1 The Test will be delivered online using the VLE ("**Online Test**"). We will provide you with information on how to access the VLE prior to the commencement of the Online Test. You acknowledge that you may only use the content on the VLE for the purposes of taking the Online Test and you are not permitted to adapt or use it for any other purpose other than this.
- 13.2 Access to the Online Test comes to an end at the end of the Online Test at which point you will no longer have access to it.
- 13.3 You agree to ensure that you will be present on the VLE to attend the Online Test at the scheduled time(s) for the entire duration of the Online Test, which are always stated as UK time and factoring in the changes in time between GMT to BST.
- 13.4 You acknowledge that the cost of any equipment and internet access are not included in the Fees and will be your own responsibility.
- 13.5 You accept that it will be your responsibility to check that equipment, or other devices you intend to use for the purposes of undertaking the Online Test, is compatible with any specification requirements of the Test.
- 13.6 You acknowledge and agree that failure to comply with paragraph 13.3 may limit your progress on the Online Test. You accept that if you fail to attend the Online Test without good reason, or without the permission of UAL, UAL may consider that you have deemed to have withdrawn from, or be required to leave the Test.
- 13.7 If there are problems with your connection to the VLE which disrupt other students who are enrolled on the Online Test, UAL reserves the right to remove you from the Online Test until you have been able to resolve the issue and you will not be entitled to any reduction or refund of the Fees.
- 13.8 UAL will use reasonable endeavours to make the Online Test available but cannot guarantee uninterrupted, timely or error-free availability or that defects will be corrected. UAL reserves the right to suspend access to the VLE and Online Test for the purpose of scheduled or emergency maintenance, repairs or upgrades to improve the performance or functionality of the VLE. UAL will use reasonable endeavours to give you reasonable notice in the event of any suspension or withdrawal of the VLE of which UAL is aware. You accept and acknowledge that providing UAL has complied with the provisions of this paragraph 13.8, UAL will not be held responsible for any technical problems you encounter following the purchase of an Online Test, and accepts no liability to the extent there are errors, defects, interruptions and periods of suspension relating to the VLE.
- 13.9 To the extent permitted by law, UAL accepts no liability whatsoever for loss, destruction or corruption of or to data or content uploaded onto the VLE.

### **14. Online Test: content, access, sharing and reproduction**

- 14.1 You agree that you will not record, reproduce, download, modify, re-publish, sub-license, sell, share, broadcast, transmit, make available, disseminate or distribute in any way any of the content provided to you as a part of the Online Test.
- 14.2 UAL is not responsible for the location, hardware and infrastructure you choose to access the VLE from and as such it is your responsibility to comply with any necessary health and safety regulations that apply.

### **15. Data Protection**

- 15.1 We will process Personal Data, including Sensitive Personal Data, in accordance with the Data Protection Laws. You understand and accept that we will use your data as set out in our Privacy Policy: <https://www.arts.ac.uk/privacy-information>.
- 15.2. You must inform us promptly if:

- (a) there is any change to your immigration status; or
- (b) your contact details change.

## **16. Events Outside Our Control**

- 16.1 We shall not be responsible for any failure to perform or delay in performing our obligations under the Contract that is due to an Event Outside Our Control. If an Event Outside Our Control takes place which affects our obligations under the Contract then:
- (a) we will contact you as soon as reasonably possible to notify you;
  - (b) our obligations under the Contract will be suspended and our time for performance extended for the duration of the Event Outside Our Control; and
  - (c) we will restart the Services as soon as possible when the Event Outside Our Control is over.

## **17. Students under the age of 18**

- 17.1 If you are under the age of 18 years at the start of the Test your parent or guardian must sign a parental consent form, which you can request by emailing us at [languagecentre@arts.ac.uk](mailto:languagecentre@arts.ac.uk).
- 17.2 You will not be able to enrol on the Test if we have not received this form.
- 17.3 You will not be able to take the Test if you are under 16 years old on the first day of the Test.

## **18. Complaints**

- 18.1 If you have any complaints about the Services, you can raise these with us by emailing [progress-test@arts.ac.uk](mailto:progress-test@arts.ac.uk).
- 18.2 If you have a complaint about UAL, you can access UAL's complaints handling policy at <https://www.arts.ac.uk/study-at-ual/academic-regulations/complaints-and-appeals>. You acknowledge that you are required to familiarise yourself with the details of UAL's complaints handling policy and accept that there may be separate procedures for the handling of academic and non-academic complaints.

## **19. Your rights as a consumer**

As a consumer, you have legal rights in relation to the Contract which are not affected by these Terms. Advice about your rights may be available from your local Citizen's Advice Bureau.

## **20. Other important terms**

- 20.1 We may transfer our rights and obligations under any Contract to another organisation, and we will always notify you in writing if this happens, but this will not affect your rights or our obligations under the Contract.
- 20.2 The Contract is between you and us. No other person shall have any rights to enforce any of its terms. You may not transfer your place on the Test to any other person.
- 20.3 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 20.4 If we fail to insist that you perform any of your obligations under the Contract, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we automatically waive any later default by you.
- 20.5 Additional terms and conditions apply to payment of the Fees via UAL's eStore located at <https://estore.arts.ac.uk/help/terms-and-conditions> ("eStore Terms"). In the event of any conflict or inconsistency between the terms and conditions of the Contract and the eStore Terms, the terms and conditions in the Contract shall prevail.

20.6 These Terms and the Contract are governed by English law. You and we both agree to submit to the non-exclusive jurisdiction of the English courts. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.