

# TERMS OF USE

Gymglish

May 24, 2018 v4.1alpha1

## 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 primarily provides online training services. The Company's website publication manager is Benjamin Levy.

The Company creates and publishes websites including sites gymglish.com, frantastique.com, rich-morning.com, thewordofthemoth.com or vatefaire-conjuguer.com (and its polite version, allezvousfaire-conjuguer.com). The Company also designs and publishes smartphone and/or tablets applications including on Apple and Android platforms, such as, for example, Gymglish, Rich Morning Show, Frantastique, The Word Of The Month or Vatefaireconjuguer applications.

These Terms and Conditions (hereafter "TOU") define the legal framework of your access and use of the Site and/or Applications.

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.

Additionally, the use of our paid services involves acceptance of the Terms of Sales. They can be found on the pages dedicated to those services or when you subscribe to our offers.

Before using the Site and/or Applications, all Users must ensure they have the necessary technical and IT resources to access the Site and/or Applications. The

### **Explanatory comments:**

*Our Terms of Use, below, are applicable to all our services and products.*

User must also ensure that their IT equipment works correctly and is virus-free.

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.

## 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/CGU-GymGlish-fr-latest.pdf>

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

## 2 DEFINITIONS

**Subscription** refers to placing the Service at a User's disposal for a fixed price and duration and, where appropriate, a maximum 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.*

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

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

*Listings are third party offers.*

**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.*

**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.*

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

*Each User follows a personalized learning Course.*

**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 1) one of the service offers published by the Company, such as Gymglish, Frantastique or Rich Morning Show, or 2) training programs using Gymglish Studio technology operated by the Company but whose content is published by third parties.

*Product refers to our training solutions.*

**Service** refers to the delivery and correction of personalized Lessons, provided by the Company, as well as technical support to customers.

*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.*

**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.*

**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.*

**Supervisor** refers to, if applicable, the individual(s) responsible for monitoring Users for whose account the Client has subscribed to the Service.

*The Supervisor is often a training manager or human resources manager.*

**Supervisor Space** refers to a space on the Site for Supervisors where they can invite Users, purchase Subscriptions, and supervise the training of Users.

## 3 SERVICES AVAILABLE VIA THE SITE AND THE APPLICATIONS

### 3.1 GENERAL PRESENTATION

The Site and Applications allow access to all Services and content provided by the Company. In particular, Users are allowed:

- to learn about the different Services of the Company;
- to register for the Free Test;
- to subscribe to the Services;
- to access free content including Vatefaireconjuguer and The Word Of The Month;
- to access Users forums;
- to read testimonials posted by other Users
- to use the Marketplace.

*The Site and Applications allow access to all services and content provided by the Company.*

### 3.2 FREE TEST

You may also be offered to register for a Test of our paid Services. Registration to the Test is **free, without obligation and does not require that the Client provide a credit card number**.

It allows Users to discover the operation of some Services offered by the Company, to introduce our offers, and validate the compatibility of your software environment. The duration of the Test is determined during the subscription.

Registration to the Test is possible only once per User (identified by his/her e-mail address) and once per Product, and requires no obligation to subscribe to the paid Services of the Company.

You can unsubscribe from the Test at any time via a dedicated link, or if needed, contact our support team at the following address: [support@gymglish.com](mailto:support@gymglish.com).

*Our test is free and non-binding, requires an email address and does not require the disclosure of a credit card number.*

### 3.3 PORTFOLIO

The Company will deliver the portfolio, an initial level assessment, free of charge, including a pedagogical summary following the completion of the first 10 lessons of Gymglish or the first 7 lessons for Frantastique. These are attainable within the free Test.

*An initial level assessment is delivered upon completion of the free Test.*

## 4 MARKETPLACE

### 4.1 Subscription

To access the Marketplace, the User must create an account. By creating this account, You agree to protect the information on your account and accept full responsibility for use of your account by Yourself or a third party.

*The User is responsible for any action carried out using their account.*

### 4.2 Characteristics

As the host of Listings published on the Marketplace, the Company cannot be held responsible for the quality, safety, adequacy or accuracy of the content of any Listing, nor for the ability of Sellers to deliver the corresponding Service.

*The Company is not responsible for the content of Listings nor for the smooth running of the service.*

The Company is considered a third party in the contract between the Seller and the Client and is not involved in its execution. However, the Company may in some cases described in section 4.5 mediate disputes.

The Seller shall invoice the Client for its Provision, and shall respect the all applicable laws concerning invoices. The Seller is notified that the price displayed to the Users includes European Value Added Tax and will set their prices accordingly.

*The Seller invoices the Client directly.*

Ensuring delivery of Provision as described in the Listing is the sole responsibility of the Seller.

It is forbidden for Sellers to bypass the Marketplace and offer their services directly to the Users.

### 4.3 Content

The Listings and reviews posted by Clients regarding Listings are not reviewed by the company. They may be moderated after their publication if they are deemed offensive or violate the law or ethical standards (abuse, defamation, insults, out of context comments, etc.). Once a Listing or review has been deemed inappropriate, the Company reserves the right to edit or delete the Listing or review concerned.

*The Listings and their reviews are not vetted by the Company. The Company may, however, moderate them if necessary.*

The Company also reserves the right not to put publish a Listing deemed inappropriate or invalid.

The Seller authorizes the Company to use the content of their Listing(s) as part of the operation of the Marketplace, or for promoting said Listing or our Services or those of third parties. The Company guarantees that such use of Listings will not be defamatory or abusive.

*We may use the Listing content.*

## 4.4 Cost of the service

Access to the Marketplace and searching for Listings are free. The payment between Client and Seller follows the guidelines described in section 4.5. In no case may the Seller request additional payment during the Provision. Once the transaction has been completed between the Seller and the Client, the Company will charge the Seller for its matchmaking service and the payment fees incurred. Value Added Tax (VAT) will be added to this invoice in accordance with European regulations.

The amount of the commission taken by the Company may vary and is indicated on the Marketplace when the Seller posts their Listing. The amount of the payment fees incurred is also variable and depends on the payment methods chosen by the Client and the Seller.

The Seller will receive the amount stated in the Listing, minus the commission taken by the Company, the payment fees and the VAT.

*The Company invoices the Seller.*

## 4.5 Acceptance of a Listing

The User and the Seller agree upon the time and date of the Provision via the internal messaging system provided by the Company. The Company recommends that this agreement be reached by both parties before accepting the Listing.

After the acceptance of a Listing by a Client, the Seller has 48 hours to confirm and accept the Delivery Date specified by the Customer. In the case that a Listing contains training lasting several days, the Delivery Date will be defined as the date of the first course. If the Provision is not accepted by both parties, the Client will not be charged. Otherwise, payment will be debited upon confirmation by the Seller, and initially put in an escrow account managed by a third party secure payment provider.

Once the Delivery Date has passed, the Customer is asked to evaluate the Service. If there is no dispute within 24 hours, the Company will unblock the escrow account managed by the third party secure payment operator in order to permit the Seller to be paid in full as described in the 4.4 section. After this initial matchmaking, the Client and the Seller are directly responsible for the smooth continuation of the Provision.

In the case of a dispute by a Client within 24 hours of the delivery Date of the Service, payment will remain blocked in the escrow account pending resolu-

*The Client is charged upon confirmation by the Seller, and payment remains blocked in an escrow account pending smooth delivery of the Service.*

*The Client has 24 hours to report any problems with the Seller.*

tion of the dispute via mediation organized by the Company. Following this mediation, the Company will conduct a partial or total refund of the Client and/or a partial or total payment to the Seller, at the discretion of the Company.

*Mediation by the Company is used to resolve potential disputes.*

## **4.6 Right of withdrawal and/or cancellation**

As cancelling courses is detrimental to Sellers, especially if late, the Marketplace offers a fair cancellation system to compensate for the potential withdrawal of the Customer.

For each Listing, the Seller may choose a “Strict” or “Flexible” cancellation option. Each Listing option is associated with a minimum cancellation time from the Delivery Date. The Seller’s refund and payment percentage (excluding payment fees) depend on the cancellation option chosen by the Seller, the cancellation date of the Client, and the delay mentioned above.

These rates are available on the Marketplace.

The Company reminds all parties that the right of withdrawal cannot be used once the Provision has begun.

*Note: cancelling a course may incur costs.*

# **5 INTELLECTUAL PROPERTY**

## **5.1 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 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 5.2 Any not expressly authorized use of protected contents will be

*The Company respects the legal provisions on copyright.*

liable to prosecution in accordance with the law in force. It is therefore forbidden to reproduce, represent, imitate and/or use in any way possible, every or any portion of the content owned by the Company, without prior authorization from the Company, the author or the rightful owner of copyrighted contents.

## **5.2 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 copyist in accordance with Article L.122 - 5 paragraph 2 of the Intellectual Property Code.

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

## **5.3 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:

- 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;

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



- You agree to pay any and all fees, royalties in relation to the content which You post on the Site

## 6 USER OBLIGATIONS

When using our Site, our Service or Applications, You agree to respect any existing laws or regulations and to not violate third-party rights or public order, as well as the limitations contained in the present Terms of Use. The Company will not be held responsible for violations of the Terms Of Use.

To this end, You agree:

- not to hinder or disrupt the Services, servers, networks connected to the Site.
- to comply with procedures, general policies or to regulatory provisions applicable to networks connected to the Site.
- not to collect, store and give to any third party, any or all personal data from other Users or Clients.
- not to use IT viruses, bugs or any other method to obtain benefits or access to protected data on the Site or the Applications.
- to immediately notify the Company by email at the address support@gymglish.com if a security fault on the Site or Application is discovered.
- to respect other Users.
- not to harass or harm other Users in any way.
- not to collect or store personal data of other Users for any purposes.
- not to broadcast content that may incite or constitute the realization of crimes or offenses, provoke discrimination or racial hatred, and more generally, that may be contrary to laws and regulations in force, the present TOU and social morals.
- not try to mislead other Users by using the name or social denomination of other persons.
- not to publicly post or transmit in any other way promotional material in an unauthorized manner, particularly engaging in sending "spam".

*The User agrees not to interfere in the proper functioning of the Site and the Applications.*

- not to denigrate the Site and/or Applications and/or the Company and/or other Users on social media or any other platform.
- not to give any third party access to Your Lessons.

Each User agrees that all the information provided, particularly information concerning personal details is adequate, accurate, up to date and complete.

## 7 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);
- 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;

*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 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.

## 8 TESTIMONIALS

In cases where Users share their experience, in particular via the sites "Users Stories" (<http://stories.gymglish.com> or <http://stories.frantastique.com>).

com), or the comments sections of the Applications marketplaces (Android Market and Apple Store in particular), they allow the Company to use their comments for promotional or publicity purposes. The Company commits not to distort the content of these comments.

*Your comments and testimonials are welcome on our sites: [stories.gymglish.com](https://www.gymglish.com) and [stories.frantastique.com](https://www.frantastique.com).*

## **9 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.*

## **10 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.

## **11 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

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

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.

## 12 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/IEC 27001, ISO 14001, ISO 9001, SOC 1 (SSAE 18), SOC 2, SOC 3, PCI DSS Level 1 FedRAMP JAB P-ATO, NIST 800-53, FISMA, NIST 800-171 (DFARS), CJIS, ITAR, FIPS 140-2, HITRUST HIPAA, HITECH, Swiss-US Safe Harbor, CDSA, SAS 70 Type II, Privacy Shield et Safe Harbor: see <https://www.rackspace.com/compliance>. Rackspace can be reached by phone on +44 20 3131 6381.

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

## 13 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.

## 14 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.

## 15 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

*This document is subject to French law.*

jurisdiction, the recognition and enforcement of judgments in civil and commercial matters.