

## CUSTOMER TERMS AND CONDITIONS

### 1. **These terms**

- 1.1. **What these terms cover.** These are the terms and conditions on which we supply childcare services to you in relation to your child.
- 1.2. **Why you should read them.** Please read these terms carefully before you sign the enrolment form. These terms tell you who we are, how we will provide services to you, how you and we may change or end the contract, what to do if there is a problem and other important information. If you think that there is a mistake in these terms, please contact us to discuss.

### 2. **Information about us and how to contact us**

- 2.1. **Who we are.** We are The Day Nursery, a partnership established in England and Wales. Our address is Church Road, Rawreth, Wickford, Essex, SS11 8SH.
- 2.2. **How to contact us.** You can contact us by telephoning our consumer service team on: 01268 769522, or by writing to us at: [admin@thedaynursery.org.uk](mailto:admin@thedaynursery.org.uk) or Church Road, Rawreth, Wickford, Essex, SS11 8SH.
- 2.3. **How we may contact you.** If we have to contact you, we will do so by telephone or by writing to you at the email address or postal address you provided to us in your enrolment form.
- 2.4. **"Writing" includes emails.** When we use the words "writing" or "written" in these terms, this includes emails.

### 3. **Our contract with you**

- 3.1. **How we will accept your enrolment application.** Our acceptance of your application for enrolment will take place when we tell you that we are able to provide you with the services, which we will also confirm in writing to you, at which point a contract will come into existence between you and us.
- 3.2. **If we cannot accept your enrolment application.** If we are unable to accept your application for enrolment, we will inform you of this and will not charge you for the services. This might be because of unexpected limits on our resources which we could not reasonably plan for, because of an issue with your funding, or because we have identified an error in the price or description of the services.

4. **Your rights to make changes.** If you wish to make a change to the services, please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the services, their timing or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change.

### 5. **Our rights to make changes**

- 5.1. **Minor changes to the services.** We may change the services:
  - 5.1.1. to reflect changes in relevant laws and regulatory requirements such as updated health and safety practices; and
  - 5.1.2. to implement minor technical adjustments and improvements, for example to improve the quality of the services. These changes will not affect your use of the services.
- 5.2. **More significant changes to the services and these terms.** In addition, we may make material changes to these terms or the services, such as changes to our prices, the location or dates of delivery of the services, but if we do so we will notify you and you may then contact us to end the contract and receive a full refund of any pre-paid fees before the changes take effect.

### 6. **Providing the services**

- 6.1. **What services we provide.** The services we will provide to you under this contract are those selected (if applicable) and set out in the enrolment form.
- 6.2. **When we will provide the services.** We will supply the services to you from the date set out in the enrolment form for the time period set out in the enrolment form and continuing thereafter until either you end the contract for the services as described in clause 7 or we end the contract by written notice to you as described in clause 8.
- 6.3. **We are not responsible for delays outside our control.** If our performance of the services is affected by an event outside our control, then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any services you have paid for but not received.
- 6.4. **What will happen if you do not provide required information to us.** In order to safely provide the services to you and your child, we will need certain information from you, for example, emergency contact details, or details of your child's doctor and any relevant medical information. If you do not provide this information with your application for enrolment, we will contact you in writing

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to ask for this information. If you do not, within a reasonable time of us asking for it, provide us with this information, or you provide us with incomplete or incorrect information, we may either end the contract (see clause 8.1) or make an additional charge of a reasonable sum to compensate us for any extra work that is required as a result. We will not be responsible for providing the services late or not providing any part of them if this is caused by you not giving us the information we need within a reasonable time of us asking for it.

- 6.5. **Reasons we may suspend the services.** We may have to suspend the services to:
- 6.5.1. deal with technical problems or make minor technical changes;
  - 6.5.2. update the services to reflect changes in relevant laws and regulatory requirements;
  - 6.5.3. make changes to the services as requested by you or notified by us to you (see clause 5).
- 6.6. **Your rights if we suspend the services.** We will contact you in advance to tell you we will be suspending the services, unless the problem is urgent or an emergency. If we have to suspend the services, we will adjust the price so that you do not pay for services while they are suspended. You may contact us to end the contract if we suspend the services, or tell you we are going to suspend them, in each case for a period of more than one month and we will refund any sums you have paid in advance for services not provided to you.
- 6.7. **We may suspend the services to you and your child for health and safety reasons.**
- 6.7.1. If your child's behaviour becomes a threat to their health and safety or the health and safety of other people, we may suspend supply of the services until, in our reasonable opinion, your child's behaviour no longer poses such a threat.
  - 6.7.2. If your child contracts an infectious illness, we will suspend supply of the services until such time as a doctor confirms in writing that your child is no longer contagious.
  - 6.7.3. If your child suffers any diarrhoea or sickness, we will suspend supply of the services until such time as they have recovered for at least 48 hours without symptoms prior to a session.
  - 6.7.4. If at any time we believe that your child is unwell we shall use our best efforts to contact you or your emergency contacts so that you can collect your child if appropriate. We can only administer medicine to your child if you have completed a Nursery Medicine form in advance.
- 6.8. **We may also suspend the services if you do not pay.** If you do not pay us for the services when you are supposed to (see clause 10.5.2) and you still do not make payment within 7 days of us reminding you that payment is due, we may suspend supply of the services until you have paid us the outstanding amounts. We will contact you to tell you we are suspending supply of the services. We will not suspend the services where you dispute the unpaid invoice (see clause 10.7). We will not charge you for the services during the period for which they are suspended. As well as suspending the services we can also charge you interest on your overdue payments (see clause 10.6).
7. **Your rights to end the contract**
- 7.1. **You can always end the contract before the services have been supplied and paid for.** You may contact us at any time to end the contract for the services, but in some circumstances we may charge you certain sums for doing so, as described below. Any deposit paid on enrolment to secure your child's place (see clause 10.5.2) is non-refundable.
- 7.2. **What happens if you have good reason for ending the contract.** If you are ending the contract for a reason set out at 7.2.1 to 7.2.5 below the contract will end immediately and we will refund you in full for any services which have not been provided or have not been properly provided. The relevant reasons are:
- 7.2.1. we have told you about a major upcoming change to the services or these terms which you do not agree to (see clause 5.2);
  - 7.2.2. we have told you about an error in the price or description of the services you have ordered and you do not wish to proceed;
  - 7.2.3. there is a risk the services may be significantly delayed because of events outside our control;
  - 7.2.4. we suspend the services for technical reasons, or notify you are going to suspend them for technical reasons, in each case for a period of more than 1 month; or
  - 7.2.5. you have a legal right to end the contract because of something we have done wrong.
- 7.3. **What happens if you end the contract without a good reason.** Unless you have a right to end the contract immediately (see clause 7.2), the contract will not end until 28 days after the day on which you contact us. We will refund any advance payment you have made for services which will not be provided to you. For example, if you tell us you want to end the contract on 4 February the services will stop on 3 March. We will only charge you for services up to 3 March and will refund any sums you have paid in advance for services after 3 March.

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### 8. **Our rights to end the contract**

8.1. **We may end the contract if you break it.** We may end the contract at any time by writing to you if:

- 8.1.1. you do not make any payment to us when it is due and you still do not make payment within 28 days of us reminding you that payment is due;
- 8.1.2. you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide the services (see clause 6.4);
- 8.1.3. if your child's behaviour becomes a threat to their health and safety or the health and safety of other people;
- 8.1.4. you behave in a way that we consider to be threatening, abusive, or otherwise inappropriate towards our staff, other customers or children; or
- 8.1.5. you otherwise do not comply with any of your obligations under the contract.

8.2. **You must compensate us if you break the contract.** If we end the contract in the situations set out in clause 8.1 we will refund any money you have paid in advance for services we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of your breaking the contract.

8.3. **We may stop providing the services.** We may write to you to let you know that we are going to stop providing the services. We will let you know at least 7 days in advance of our stopping the services and will refund any sums you have paid in advance for services which will not be provided.

### 9. **If there is a problem with the services**

9.1. **How to tell us about problems.** If you have any questions or complaints about the services, please contact us. You can contact us by telephoning our consumer service team at 01268 769522 or by writing to us at [admin@thedaynursery.org.uk](mailto:admin@thedaynursery.org.uk) or The Day Nursery, Church Road, Rawreth, Wickford, Essex, SS11 8SH. Alternatively, please speak to one of our staff.

9.2. **Our complaints procedure.** We have implemented a complaints procedure to be followed whenever any complaints are made. If you would like a copy of our procedure please contact us.

9.3. **Summary of your legal rights.** See the box below for a summary of your key legal rights in relation to the services. Nothing in these terms will affect your legal rights.

#### **Summary of your key legal rights**

This is a summary of your key legal rights. These are subject to certain exceptions. For detailed information please visit the Citizens Advice website [www.adviceguide.org.uk](http://www.adviceguide.org.uk) or call 03454 04 05 06.

The Consumer Rights Act 2015 says:

you can ask us to repeat or fix a service if it's not carried out with reasonable care and skill, or get some money back if we can't fix it.

if you haven't agreed a price beforehand, what you're asked to pay must be reasonable.

if you haven't agreed a time beforehand, it must be carried out within a reasonable time.

### 10. **Price and payment**

10.1. **Where to find the price for the services.** What, when, and how you must pay our fees will depend on whether you are entitled to government funding under Free Early Education Entitlement ("FEEE") for the services provided in respect of your child's place. The price of the services (which includes VAT) will be the price set out in our price list in force at the date of your completed enrolment form unless we have agreed another price in writing. We take all reasonable care to ensure that the prices of services advised to you are correct. However please see clause 10.3 for what happens if we discover an error in the price of the services you order. We reserve the right to adjust our prices from time to time (see clause 5.2).

10.2. **We will pass on changes in the rate of VAT.** If the rate of VAT changes between your enrolment form date and the date we provide the services, we will adjust the rate of VAT that you pay, unless you have already paid for the services in full before the change in the rate of VAT takes effect.

10.3. **What happens if we got the price wrong.** It is always possible that, despite our best efforts, some of the services we sell may be incorrectly priced. We will normally check prices before accepting your application for enrolment so that, where the service's correct price at your enrolment form date is less than our stated price at your enrolment form date, we will charge the lower amount. If the service's correct price at your enrolment form date is higher than the price stated, we will contact you for your instructions before we accept your application for enrolment. If we accept your application for enrolment where a pricing error is obvious and unmistakable and could reasonably have been recognised by you as a mispricing, we may end the contract, refund you any sums you have paid and not perform the services.

10.4. **What you must pay.** The sums you have to pay for our services will depend upon how your child's place is being funded. If:

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- 10.4.1. **You are funded by a Local Authority under FEEE.** Our fees will be paid directly by the Local Authority to the extent that they are covered by FEEE, except for any costs which fall outside of FEEE that you may pay (see clause 10.4.2).
- 10.4.2. **Additional services.** Even where your child's place is fully funded by a Local Authority and covered by FEEE, there may be optional additional services which you choose to take from us, whether these are extra hours not covered by FEEE or whether these are simply additional services such as meals. You can either select these additional services on your enrolment form or agree them with us at a later date in writing. Where you have selected any additional services, these will be charged for in the same way as if you were self-funded (see clauses 10.4.3 and 10.5.2). Fees for any additional services will not impact any fees that are funded under FEEE.
- 10.4.3. **You are Self-Funded.** You will be responsible for paying our fees in full from your own funds, in accordance with the relevant terms of this contract. This includes any circumstances where you are or become no longer eligible for funding under FEEE.
- 10.5. **When you must pay and how you must pay.** Our payment terms depend upon how your child's place is being funded. If you are:
- 10.5.1. **Funded by a Local Authority under FEEE.** The Local Authority will pay our fees, except for any costs which fall outside of FEEE that you may pay (see clause 10.4.2); or
- 10.5.2. **Self-Funded.** Except for circumstances where you are only paying for additional services, when we confirm acceptance of your application for enrolment you must make an advance payment of £25 to secure your child's place. This deposit will be deducted from your first invoice. We will invoice you monthly in advance for the services until the services are completed and you must pay each invoice no later than the first day of the month for which the Charges relate. We accept payment by Direct Debit and by all major debit and credit cards, although we reserve the right to require you to set up a Direct Debit mandate before the first payment is due.
- 10.6. **We can charge interest if you pay late.** If you do not make any payment to us by the due date (see clause 10.5.2) we may charge interest to you on the overdue amount at the rate of 4% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.
- 10.7. **What to do if you think an invoice is wrong.** If you think an invoice is wrong please contact us promptly to let us know. You will not have to pay any interest until the dispute is resolved. Once the dispute is resolved we will charge you interest on correctly invoiced sums from the original due date.
- 10.8. **Voluntary contributions.** We are grateful for any voluntary contributions you may wish to make to help us maintain the quality of the services we provide and ensure the enjoyment of the children. If you would like to make regular voluntary contributions such as by standing order, please let us know and we can arrange this. Voluntary contributions can be withdrawn at any time, and the other provisions of this clause 10 do not apply to any voluntary contributions you may make.
11. **Our responsibility for loss or damage suffered by you**
- 11.1. **We are responsible to you for foreseeable loss and damage caused by us.** If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.
- 11.2. **We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of your legal rights in relation to the services as summarised at clause 9.3.
- 11.3. **We do not accept liability for damage to your property.** We discourage you or your child from bringing any personal items to our premises, as these may become lost or broken. Where any personal items are brought to our premises, we do not accept any liability for any loss or damage to those items, except where it would be unlawful for us to do this (see clause 11.2).
- 11.4. **We are not liable for business losses.** We only supply the services for domestic and private use. If you use the services for any commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

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12. **How we may use your personal information.** We will only use your personal information as set out in our Privacy Policy. You can find our Privacy Policy on our website at <http://www.thedaynursery.org.uk/privacy-policy/>.
13. **Other important terms**
- 13.1. **We may transfer this Agreement to someone else.** We may transfer our rights and obligations under these terms to another organisation. We will contact you to let you know if we plan to do this. If you are unhappy with the transfer you may contact us to end the contract within 30 days of us telling you about it and we will refund you any payments you have made in advance for services not provided.
- 13.2. **You may only transfer your rights under our guarantee to someone else.** You may only transfer your rights or your obligations under these terms to another person with our written consent. We may withhold our consent if your proposed transfer would cause us difficulty in continuing to provide the services or enforce the terms of the contract.
- 13.3. **Nobody else has any rights under this contract.** This contract is between you and us. No other person shall have any rights to enforce any of its terms. Neither of us will need the consent of any other person to end the contract or make any changes to these terms.
- 13.4. **If a court finds part of this contract illegal, the rest will continue in force.** 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.
- 13.5. **Even if we delay in enforcing this contract, we can still enforce it later.** If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things or prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide the services, we can still require you to make the payment at a later date.
- 13.6. **Safeguarding.** We have certain duties and obligations which we are legally required to comply with when providing the services. This includes a duty to take reasonable action to ensure the safety and welfare of your child. If any of our staff have reasonable grounds to be concerned that a child in our care may be subject to ill treatment or any form of abuse, we may inform and cooperate with the relevant authorities in accordance with child protection procedures. In addition, we will only release your child at the end of a session to you or a person authorised by you in writing in advance. We may ask you to provide photographs of these persons for our records to help us maintain your child's safety. We comply with all of our legal obligations regarding child safeguarding, including appropriate checks regarding our staff.
- 13.7. **Which laws apply to this contract and where you may bring legal proceedings.** These terms are governed by English law and you can bring legal proceedings in respect of the services in the English courts. If you live in Scotland you can bring legal proceedings in respect of the services in either the Scottish or the English courts. If you live in Northern Ireland, you can bring legal proceedings in respect of the services in either the Northern Irish or the English courts.
- 13.8. **Alternative dispute resolution.** Alternative dispute resolution is a process where an independent body considers the facts of a dispute and seeks to resolve it, without you having to go to court. If you are not happy with how we have handled any complaint, you may want to contact the alternative dispute resolution provider we use. You can submit a complaint to Ofsted via their website at <https://contact.ofsted.gov.uk/online-complaints>. Ofsted will not charge you for making a complaint and if you are not satisfied with the outcome you can still bring legal proceedings.