

**TERMS AND CONDITIONS FOR THE SUPPLY OF TRAINING SERVICES –  
OSBORNE TRAINING SERVICES LIMITED**

**1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**).

**Booking Form:** The form submitted by the Client to the Supplier to accept a Proposal or Quote, to which these Conditions are attached or annexed.

**Contract:** each contract for the provision of the Services incorporating these Conditions, formed by the Client's acceptance of a Proposal and/or submission of a Booking Form and the Supplier's acknowledgment of the same under condition 2.2.

**Client:** the person, firm or company who purchases Services from the Supplier.

**Client's Equipment:** any equipment, systems, cabling or facilities provided by the Client and used directly or indirectly in the supply of the Services.

**Deliverables:** all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**Document:** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**In-put Material:** all Documents, information and materials provided by the Client relating to the Services including (without limitation), computer programs, data, reports and specifications.

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

**Pre-existing Materials:** all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications.

**Proposal:** the formal offer to which these Conditions are attached setting out, amongst other things, the Services, which can also be referred to as 'Quote' or 'Quotation'

**Services:** the training services to be provided by the Supplier under the Contract as set out in the Proposal together with any other services which the Supplier provides, or agrees to provide, to the Client.

**Supplier:** Osborne Training Services Limited.

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Client.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Headings in these conditions shall not affect their interpretation.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of the Contract.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.7 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.8 References to conditions and schedules are to the conditions and schedules of the Contract.

## **2. APPLICATION OF CONDITIONS**

- 2.1 These Conditions shall:
  - (a) apply to and be incorporated into the Contract; and
  - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Client's purchase order, confirmation of order, acceptance of a

Proposal or quotation, or specification or other Document supplied by the Client, or implied by law, trade custom, practice or course of dealing.

- 2.2 The Client's purchase order, the Client's acceptance of a Proposal or quotation for Services by the Supplier or the Client's submission of a Booking Form, constitutes an offer by the Client to purchase the Services on these Conditions. No offer placed by the Client shall be accepted by the Supplier other than:
- (a) by a written acknowledgement issued and executed by the Supplier; or
  - (b) (if earlier) by the Supplier starting to provide the Services,

when a contract for the supply and purchase of the Services on these Conditions will be established. The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

- 2.3 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

### **3. COMMENCEMENT**

- 3.1 The Services supplied under the Contract shall be provided by the Supplier to the Client from the date of acceptance by the Supplier of the Client's offer in accordance with condition 2.2.

### **4. SUPPLIER'S OBLIGATIONS**

- 4.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Client, in accordance in all material respects with the Proposal.
- 4.2 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at the Client's premises and that have been communicated to it under condition 5.1(e), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

### **5. CLIENT'S OBLIGATIONS**

- 5.1 The Client shall:
- (a) co-operate with the Supplier in all matters relating to the Services;

- (b) provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Client's premises, office accommodation, data and other facilities as required by the Supplier;
- (c) provide to the Supplier, in a timely manner, such In-put Material and other information as the Supplier may require and ensure that it is accurate in all material respects;
- (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of the Client's obligations and actions under this condition 5.1(d);
- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises;
- (f) ensure that all Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment, the use of In-put Material and the use of the Client's Equipment in relation to the Supplier's Equipment insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment, in all cases before the date on which the Services are to start;
- (h) keep, maintain and insure the Supplier's Equipment in good condition, and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation;

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.

5.3 The Client shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Client in writing.

5.4 The Client shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 12 months after the termination of the

Contract, solicit or entice away from the Supplier or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.

**6. CHARGES AND PAYMENT**

6.1 In consideration of the provision of the Services by the Supplier, the Client shall pay the Price and any additional sums which are agreed between the Supplier and the Client, or which, in the Supplier's sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any In-put Material or any other cause attributable to the Client. Prices may be subject to change.

6.2 The Price and all other charges quoted to the Client for the provision of Services are exclusive of any Value Added Tax, for which the Client shall also be liable and the Supplier shall add to its invoice(s) at the appropriate rate.

6.3 The Supplier may invoice the Client following the Client's submission of a Booking Form or acceptance of a Proposal, or at other times agreed with the Client.

6.4 The Client shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt or, if earlier, no later than 30 days prior to the commencement of the Services.

6.5 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Supplier on the due date, the Supplier may:

- (a) charge interest on such sum from the due date for payment at either:
  - (i) the annual rate of 8% (eight percent) per annum above the Bank of England base rate from time to time; or
  - (ii) the maximum rate permitted by applicable law until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and
- (b) suspend all Services until payment has been made in full.

6.6 Time for payment shall be of the essence of the Contract.

6.7 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.7 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

6.8 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Client to the Supplier against any liability of the Supplier to the Client.

**7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 As between the Client and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to condition 7.2, the Supplier licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services. If the Contract terminates, this licence shall automatically terminate.
- 7.2 The Client acknowledges that, where the Supplier does not own any Pre-existing Materials, the Client's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Client.
- 7.3 The Client warrants that any Input Material and the Supplier's use of such In-put Material in relation to the provision of the Services will not infringe the Intellectual Property Rights of any third party and the Client shall indemnify the Supplier against any loss, damages, costs, expenses or other claims arising from any such infringement.

**8. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**

- 8.1 The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Client may obtain.
- 8.2 The Client may disclose such information:
- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Client's obligations under the Contract; and
  - (b) as may be required by law, court order or any governmental or regulatory authority.
- 8.3 The Client shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 7.1.
- 8.4 The Client shall not use any such information for any purpose other than to perform its obligations under the Contract.

8.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Client (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

**9. LIMITATION OF LIABILITY - THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

9.1 This condition 8.1 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Client in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Client of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these Conditions limits or excludes the liability of the Supplier:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Supplier; or
- (c) for any liability incurred by the Client as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

9.4 Subject to condition 9.2 and condition 9.3

- (a) the Supplier shall not be liable for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill and/or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or

- (viii) loss of corruption of data or information; or
- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services.

9.5 The Supplier shall not be liable for:

- (a) any act or omission (including but not limited to a negligent act or omission) of the Client, its employees, contractors, subcontractors or agents;
- (b) any failure or malfunctioning of any machinery, tools, facilities or equipment provided by the Client;
- (c) any incompetence, act or omission of the Client's employees being trained;
- (d) any accidents caused by the Client's employees;
- (e) any use or adjustments to instruments, machinery, tools, facilities or equipment by the Client, its employees, contractors, subcontractors or agents contrary to the advice or otherwise without the agreement to or knowledge of the Supplier.

9.6 Whilst every effort is made by the Supplier to ensure that the Client's employees obtain the maximum benefit from the Services, the Supplier does not guarantee or warrant that any specific progress or skills will be developed by the said employees.

## **10. DATA PROTECTION**

The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

## **11. TERMINATION/CANCELLATION/POSTPONEMENT**

11.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of

so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (f) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.1(b) to condition 11.1(h) (inclusive); or
- (j) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (k) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

11.2 The Client has the right to terminate the Contract and cancel the Services in writing, subject to Clause 11.3.

11.3 Upon the Client cancelling the Services and thereby terminating the Contract under Clause 11.3, the Client shall pay to the Supplier:

- 11.4.1 10% of the Price, in the event of the Services being cancelled 30 or more days before the commencement of the Services;
  - 11.4.2 40% of the Price in the event of cancellation 10 or more days but less than 30 days before the commencement of the Services;
  - 11.4.3 100% of the Price in the event of cancellation less than 10 days before commencement of the Services.
- 11.4 If a Client fails to attend a course or event or prevents the Supplier from providing the Services, the Client will be deemed to have terminated the Contract and the Supplier shall be entitled to charge the full Price for the Services.
- 11.5 The Supplier reserves the right to vary, cancel or postpone the Services at any time and the Supplier shall not be liable in any way to the Client in relation to such variation, postponement or cancellation.
- 11.6 In the event that the Client elects to postpone the Services (or part of the Services), the Supplier may levy any additional charge as it considers appropriate to reflect the costs or loss incurred by the Supplier by reason of the postponement. The charge will be calculated on the basis of the number of training days postponed multiplied by the daily rate for instructor(s) and any applicable interpreters.
- 11.7 On termination of the Contract for any reason:
- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
  - (b) the Client shall, within a reasonable time, return all of the Supplier's Equipment, Pre-existing Materials and Deliverables. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and
  - (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 11.8 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:
- (a) condition 7;
  - (b) condition 8;

- (c) condition 9;
- (d) condition 11; and
- (e) condition 22.

## **12. PROVISION OF THE SERVICES**

- 12.1 The Services and any Documentation will be in the English Language. The Client warrants that those being trained or attending courses will have an adequate understanding of the English Language and are capable of effective communication in both written and spoken English.
- 12.2 The Company reserves the right to utilise the services of interpreters where, in the opinion of the Supplier, those attending training or any other aspect of the Services do not have an acceptable level of understanding of the English Language. The cost of such interpreters shall be borne by the Client.
- 12.3 The Supplier's lecturing staff shall normally work for 8 hours per day, 5 days a week Monday to Friday in accordance with local working custom. Time worked in excess of this shall be treated as overtime and charged to the Client.
- 12.4 The Supplier shall replace any lecturing staff suffering from illness or incapacity as quickly as possible if such sickness or incapacity exceeds 14 days.
- 12.5 The Supplier reserves the right to replace any lecturing staff with qualified replacements at the Suppliers expense.

## **13. FORCE MAJEURE**

The Supplier shall have no liability to the Client under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

## **14. VARIATION**

- 14.1 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. The Supplier may, from time to time and subject to Client's prior written consent,

which shall not be unreasonably withheld or delayed change the Services, provided that such changes do not materially affect the nature or quality of the Services.

- 14.2 Subject to condition 14.1, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**15. WAIVER**

- 15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

- 15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**16. SEVERANCE**

- 16.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- 16.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**17. ENTIRE AGREEMENT**

- 17.1 The Contract and the documents referred to in these Conditions constitute the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

- 17.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as expressly provided in the Contract (or the documents referred to therein).

- 17.3 Nothing in this condition shall limit or exclude any liability for fraud.

**18. ASSIGNMENT**

- 18.1 The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 18.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

**19. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**20. RIGHTS OF THIRD PARTIES**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

**21. NOTICES**

- 21.1 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party at its registered address or principal place of business or home address or such other address as may have been notified for the purpose of the Contract, or as otherwise specified by the relevant party by notice in writing to the other party.
- 21.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the registered address or usual place of business or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 21.3 This condition 21 shall not apply to the service of any in any proceedings or other documents in any legal action.

21.4 A notice or other communication required to be given under or in connection with the Contract shall not be validly served if sent by e-mail.

**22. GOVERNING LAW AND JURISDICTION**

22.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).