

Train4Academy Ltd Terms and Conditions of Supply of Services

The Customer's attention is particularly drawn to the provisions of clause 8.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Academy Training Licence: a licence to use agreed Train4Academy courses for an agreed maximum number of end users for an agreed period of time.

Academy Training Package: a package to use agreed Train4Academy courses for an agreed maximum number of end users for an agreed period of time.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.7.

Contract: the contract between Train4Academy and the Customer for the supply of Services in accordance with these Conditions and Train4Academy's **Privacy Policy**, (a copy of which can be viewed on our website at <http://www.train4academy.co.uk/legal/privacy-policy.pdf>).

Customer: the person or company who purchases Services from Train4Academy.

Data Controller: has the meaning set out in section 1(1) of the Data Protection Act 1998 ("DPA").

Data Subject: an individual who is the subject of Personal Data.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for Services as set out in the Customer's purchase order form OR the Customer's written acceptance of Train4Academy's quotation OR the Train4Academy Training Licence Order Form OR the Customer's telephone order OR the Customer's written request for Services based on the information on the Train4Academy website OR the Customer's written request for Services based on the information on any other website owned and operated by Train4Academy Limited, as the case may be.

Personal Data: has the meaning set out in section 1(1) of the DPA and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which Train4Academy is providing services under this agreement.

Processing and process: have the meaning set out in section 1(1) of the DPA.

Services: the on-line training course(s) supplied by Train4Academy to the Customer as described in Train4Academy's invoice or receipt **OR** in a bespoke agreement **OR** in the Train4Academy Training Licence Order Form.

Specification: the description of the Services as set out in writing by the Customer.

Train4Academy: is the supplier of the Services and is a limited company registered in England and Wales with company number 04622965.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Train4Academy issues an invoice or a receipt for the Services or provides the Customer with (a) course activation key(s), at which point and on which date the Contract shall come into existence ("**the Contract Date**").

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Train4Academy which is not set out in the Contract.

2.4 Any descriptive matter or advertising issued by Train4Academy, and any descriptions or illustrations contained in websites owned and operated by Train4Academy, catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by Train4Academy shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF SERVICES

3.1 Train4Academy shall supply the Services to the Customer using reasonable care and skill.

- 3.2 Subject to clauses 3.3 and 3.4 Train4Academy shall make the Services available for 2 years from the date on which an invoice or receipt is issued for those Services or the amount of time which remains between the date the activation key is registered to a user and the expiry date of the activation key – whichever is lesser.
- 3.3 Where the Services are supplied further to an Academy Training Licence or an Academy Training Package availability is subject to the following limitations: -
- (i) the agreed number of users and the period of time set out in the Training Licence or Package order form (and not the standard 2 years quoted in clause 3.2);
 - (ii) where an activation key is registered, or a user registered, availability of those Services shall be limited to the amount of time that remains between the date the key or user was registered and the expiry date of the Academy Training Licence or Academy Training Package as set out in the Order Form or the expiry date of the activations keys – whichever is lesser.
- 3.4 Where the Services supplied are an IOSH Working Safely Course or IOSH Managing Safely Course availability and access to the services is subject to the following limitations: -
- (i) where a user is registered to either an IOSH Working Safely Course or IOSH Managing Safely Course the availability of those Services shall be limited to 6 months (and not the standard 2 years quoted in clause 3.2) from the date the user is setup on the course(s).
- 3.5 Train4Academy shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Train4Academy shall notify the Customer in any such event. Train4Academy may also change the awarding body accreditation or approval for any of its courses without notice provided that this does not materially affect the nature or quality of the Services.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in any Specification are complete and accurate;
 - (b) co-operate with Train4Academy in all matters relating to the Services;
 - (c) if necessary, provide Train4Academy, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Train4Academy;
 - (d) provide Train4Academy with such information and materials as Train4Academy may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
 - (f) not resell any of the Services without the prior written consent of Train4Academy.

- 4.2 The Customer shall ensure that any devices used to access the Services along with the Customers' network infrastructure comply with the following minimum specification:-
- (a) One of the following Computer Operating Systems:
 - (i) Windows Vista or later
 - (ii) MAC OS X 10.7 or later.
 - (b) One or more of the following browsers:
 - (i) Google Chrome version 47.0 or later,
 - (ii) Mozilla Firefox version 37.0 or later,
 - (iii) Internet Explorer version 8.0 or later,
 - (iv) Microsoft Edge version 20.0 or later,
 - (v) Opera version 34.0 or later,
 - (vi) Safari version 7.0 or later.
 - (c) Each of the following plug-ins:
 - (i) JavaScript version 8.0 or later and 'enabled',
 - (ii) Adobe Flash Player version 10.0 or later.
 - (d) Each of the following browser settings:
 - (i) JavaScript enabled,
 - (ii) Cookies allowed,
 - (iii) Pop-ups allowed.
 - (e) A multimedia playback device enabled and connected to audio output for narration.
- 4.3 The Customer acknowledges that if the above minimum system specifications are not met in full then this may result in the Courses not working as they should and/or the Customer's trainees not being able to access the Courses and that Train4Academy accepts no liability in respect of such failures.
- 4.4 If Train4Academy's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) Train4Academy shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Train4Academy's performance of any of its obligations;
 - (b) Train4Academy shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Train4Academy's failure or delay to perform any of its obligations under this agreement; and
 - (c) the Customer shall reimburse Train4Academy on written demand for any costs or losses sustained or incurred by Train4Academy arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be as set out in the Train4Academy website along with any other website which Train4Academy owns and operates from time to time **OR** where the Services are bespoke as agreed in writing **OR** where the Services are supplied under an Academy Training Licence, as agreed in the Academy Licence order form.
- 5.2 Train4Academy reserves the right to increase its prices.
- 5.3 Train4Academy shall invoice the Customer on receipt of an Order.
- 5.4 The Customer shall pay each invoice submitted by Train4Academy:
- (a) within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by Train4Academy, and
 - (c) time for payment should be of essence of the Contract.
- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Train4Academy to the Customer, the Customer shall, on receipt of a valid VAT invoice from Train4Academy, pay to Train4Academy such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Customer fails to make any payment due to Train4Academy under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 3% per cent per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Train4Academy may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Train4Academy to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 Train4Academy is the owner or authorised licensee of all Intellectual Property Rights in or arising out of or in connection with the Services and all materials used in the provision of the Services.
- 6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Train4Academy obtaining a written licence from the relevant licensor on such terms as will entitle Train4Academy to license such rights to the Customer. Any unauthorised resale of any of the Services by the Customer will therefore be an infringement of its

Intellectual Property Rights and the Customer agrees that such an infringement will result in the automatic termination of all agreements with Train4Academy.

7. CONFIDENTIALITY

A party (**receiving party**) 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 receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract.

8. LIMITATION OF LIABILITY

8.1 Nothing in these Conditions shall limit or exclude Train4Academy's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to clause 8.1:

- (a) Train4Academy shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Train4Academy's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Customer's last order.

8.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.4 This clause 8 shall survive termination of the Contract.

9. TERMINATION

9.1 Without limiting its other rights or remedies, the Customer shall have 28 days from the Contract Date to terminate the Contract on written notice subject to activation keys not having been registered or in the

event that the Services are being supplied further to an Academy Training Licence subject to no users having been enrolled onto Train4Academy's learning management system.

9.2 Without limiting its other rights or remedies, Train4Academy may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer:-

- (a) fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 10 days after being notified in writing to do so; or
- (b) breaches any awarding body's rules or brings Train4Academy into disrepute; or
- (c) resells any of the Services without the prior written consent of Train4Academy.

9.3 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 15 working days of that party being notified in writing to do so;
- (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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) 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;
- (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 (where a company) 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;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) 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) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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;
- (g) 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 (being a company);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) 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;

- (j) 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 clause 9.3(b) to clause 9.3(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the other party's financial position deteriorates to such an extent that in Train4Academy's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.4 Without limiting its other rights or remedies, Train4Academy may suspend provision of the Services under the Contract or any other contract between the Customer and Train4Academy if the Customer becomes subject to any of the events listed in clause 9.3(b) to clause 9.3(m), or Train4Academy reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Train4Academy all of Train4Academy's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Train4Academy shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Train4Academy Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Train4Academy may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

11. FORCE MAJEURE

11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Train4Academy including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Train4Academy or any other party), failure of a utility service or transport network, act of God, war, 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.

- 11.2 Train4Academy shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 11.3 If the Force Majeure Event prevents Train4Academy from providing any of the Services for more than 4 weeks, Train4Academy shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

12. DATA PROTECTION

- 12.1 The Customer and Train4Academy acknowledge that for the purposes of the Data Protection Act 1998, the Customer is the Data Controller and Train4Academy is the data processor in respect of any Personal Data.
- 12.2 Train4Academy shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by the Customer. For the avoidance of doubt the Customer agrees that Train4Academy shall process the Personal Data in accordance with Train4Academy's **Privacy Policy**, a copy of which can be viewed on our website at <http://www.train4academy.co.uk/legal/privacy-policy.pdf>.
- 12.3 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

13. GENERAL

13.1 Assignment and other dealings

- (a) Train4Academy may at any time assign, transfer, mortgage, charge, 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.
- (b) The Customer shall not, without the prior written consent of Train4Academy, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

13.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission subject to obtaining a successful transmission notice.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 **Severance**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

13.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Train4Academy.

13.8 **Governing law.** This 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.

13.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).