

# UP TO SPEED TRAINING & ASSESSMENT LTD TERMS AND CONDITIONS OF SERVICE

Your attention is particularly drawn to the provisions of clauses 4 and 7

## 1. INTERPRETATION

1.1 In these Terms, the following definitions apply:

- "Booking" means your booking of a Training Course as set out in your booking form or as discussed in a call by to us;
- "Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- "Contract" means a contract between us and you for the provision of a Training Course in accordance with these Terms;
- "Course Specification" means the description or specification of the Training Course provided in writing by us to you;
- "Fees" means the Fees payable by you for the Training Course in accordance with clause 5;
- "Materials" means any materials which are produced by us for you in connection with the Training Course;
- "Terms" means these terms and conditions as amended from time to time in accordance with clause 15;
- "Training Course" means the training course, including any Materials, provided by us to you as set out in the Course Specification;
- "we", "us" and "our" Means Up To Speed Training & Assessment Ltd whose principal place of business is at 411 Long Acre, Nechells, Birmingham. B7 5JX; and
- "you" and "your" means the person or firm who books a training course provided by us.

1.2 In these Terms, the following rules apply:

- 1.3 a "person" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.4 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.5 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;
- 1.6 "including", "include", "in particular" or any similar expression, shall be deemed to be without prejudice to the generality of the foregoing; and
- 1.7 "writing" or "written" includes faxes and e-mails.

## 2. BASIS OF CONTRACT

2.1 The Booking constitutes an offer by you to attend a Training Course in accordance with these Terms.

2.2 The Booking shall only be accepted when we issue a written confirmation of the Booking at which point, and on which date the Contract shall come into existence.

2.3 The Contract constitutes the entire agreement between the parties. You acknowledge that you have not relied on any statement, promise, representation or misrepresentation made or given by or on our behalf which is not set out in the Contract.

2.4 Any descriptive matter or advertising issued by us, and any descriptions or illustrations contained in our newsletters, brochures or website, are only issued or published to give an approximate idea of the Training Courses described in them. They do not form part of the Contract or have any contractual force.

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

2.6 Quotations we give are not offers and are only valid for 20 Business Days from the date of issue.

## 3. THE TRAINING COURSE

3.1 We shall provide the Training Course in accordance with the Course Specification in all material respects.

3.2 We may make any changes to the Course Specification which are necessary to comply with applicable safety and other statutory requirements, or which do not materially affect the nature or quality of the Training Course.

3.3 We warrant to you that the Training Course will be provided using reasonable care and skill.

3.4 After completion of the Training Course and any related examination, we shall forward any awarding body or attendance certificates relating to such Training Course or examination upon payment of our Fees in accordance with clause 5.

## 4. YOUR OBLIGATIONS

You shall:

- 4.1 ensure your Booking is complete and accurate and where required your official PO is provided at the time of booking (business account holders);
- 4.2 provide us with such information as we may reasonably require in order to provide the Training Course within sufficient time, including details of special requirements and any disabilities or language barriers;
- 4.3 If performance of any of our obligations under the Contract is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation ("**Trainee Default**");
- 4.4 we shall without limiting our other rights or remedies have the right to rely on the Trainee Default to relieve us from the performance of any of our obligations to the extent the Trainee Default prevents or delays our performance of any of our obligations;
- 4.5 we shall not be liable for any costs or losses you sustain or incur arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 3; and
- 4.6 If you need to cancel a booking once a firm course booking has been made, any cancellation or amendment request must be made in writing (the "Cancellation Notice"). The best way to achieve this is by emailing [bookings@utstraining.co.uk](mailto:bookings@utstraining.co.uk). Cancellations will be charged at 50% of the course fee, unless the cancellation is made within 5 working days of the commencement of the course, in which case cancellation will be charged at 100% of the course fee. If Up To Speed Training & Assessment Ltd have incurred other costs which cannot be cancelled (e.g. Hotels, pre-registration fees, etc.) these will be charged in full irrespective of when the course is cancelled. Substitute learners will be accepted free of charge. It is the responsibility of the client to ensure that the replacement learners receive the necessary information.
- 4.7 Every effort will be made to accommodate learners who are slightly late for course start times for genuine reasons. In fairness to learners who arrive on time, it is not possible to delay course start times for more than 15 minutes. If, in the opinion of the instructor, the late learner has not missed much of the course and can make this up during the day, they will be allowed to join the course. If, in the opinion of the instructor, the learner is not able to make up for the missed work, they will not be allowed to join the course, and cancellation fees will apply 'Trainee Default'.

## 5. FEES AND PAYMENT

5.1 The Fees for the Training Course shall be available upon request and confirmed in writing where applicable, which are inclusive of any Value Added Tax.

5.2 Upon request we will invoice you before the Training Course.

5.3 All course fees are payable before commencement of the course date, unless you have an agreed credit account in which case fees will be due in accordance with the agreed credit terms normally within 30 days of the invoice date in full and in cleared funds to a bank account nominated in writing by us; and time for payment shall be of the essence of the Contract. All fees are subject to VAT at the appropriate rate.

5.4 Please note that no certification will be sent out until course fees have been paid.

5.5 Without limiting any of our other rights or remedies, if you fail to make any payment due to us under the Contract by the due date for payment ("Due Date"), we shall have the right to:

5.6 charge interest on the overdue amount at the rate of 4 per cent per annum above the then current **National Westminster Bank's** base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly; and retain any awarding body or attendance certificates relating to the Training Course until receipt of full payment.

5.7 You shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.

The Supplier will charge, and the purchaser agrees to pay all, and any costs and fees incurred by the supplier for the recovery of any outstanding accounts including those of any third-party agency employed on behalf of the Supplier.

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**5.8. IT IS NOW AGREED THAT:**

The Guarantor is a Director/Officer of the Company.

5.8.1 In consideration of the Supplier entering into the agreement with the purchaser, the Guarantor agrees to guarantee the obligations of the purchaser under the agreement as set out below:

5.8.2 Should the Company fail to satisfy its obligations under the terms of the Contract relating to payment, The Guarantor personally guarantees to pay all sums outstanding under the terms of the Contract to the Supplier.

5.8.3 The Guarantor irrevocably and unconditionally agrees to guarantee the performance of the agreement by the purchaser and all and future payment obligations of the purchaser pursuant to the agreement as varied from time to time.

5.8.3 Without prejudice to clause 1 above the guarantor as principal obligator and as a separate and independent obligation, unconditionally and irrevocably agrees to indemnify the supplier in respect of any losses, costs, and expenses suffered or incurred by the supplier arising out of or in connection with any failure of the purchaser to perform its obligations pursuant to the agreement as varied from time to time, including but not limited to any failure to make due payment in respect of its present and future indebtedness and other liabilities to the supplier under the agreement, whether actual or contingent.

5.8.4 The liability of the guarantor under this guarantee shall not be released, diminished nor affected by any variation of the terms of the agreement nor forbearance neglect or delay by the supplier in seeking performance of the obligations of the guarantor under this guarantee or any granting of time for such performance or anything else which, although it could affect the liability of the guarantor , would not affect the liability of a person who had agreed to pay then debts on another as if they were their own obligations.

5.8.5 The guarantors' obligations of guaranteeing the debts under this guarantee are continuing obligations. This means that those obligations apply in respect of the full amount of the debts at the time that the supplier makes a demand under this guarantee even if, at some time the amount of the debts has been less than the amount at the time of the claim.

5.8.6 A guarantor shall not be discharged, nor shall his liability be reduced by any time or any other indulgence or concession given to the purchaser by the supplier, or by anything he supplier may do or omit to do or by any other dealing, act or omission that but for this provision would discharge or reduce the guarantors' liability.

5.8.7 The Supplier shall not be obliged to take any action or obtain judgment against the purchaser before taking steps to enforce any of its obligations or remedies under this guarantee.

5.8.8 Any demand or notice under this guarantee shall be in writing, signed by an authorised person of the supplier and will be served on the guarantor at the address of the business/company or the private address of the guarantor by 1<sup>st</sup> class post and will be deemed to be served two days following posting.

5.8.9 The guarantor shall not make any withholding on account of tax from any payment due to the supplier under this guarantee, unless the guarantor is required by law to do so. If the guarantor is required by law to do so, the guarantor shall increase the amount of the relevant payment so that, after withholding, the supplier receives the appropriate amount. The guarantor shall notify the supplier if these circumstances arise.

5.8.10 The Guarantor personally undertakes to indemnify the supplier immediately on demand in respect of any losses, damages, costs, or expenses which the Supplier incurs as a result of breach of the terms of the Contract relating to payment.

5.9 We reserve the right to charge any overdue accounts pursuant to the "The Late Payment of Commercial Debts (Interest) Act.

**6. INTELLECTUAL PROPERTY RIGHTS**

6.1 We shall own the property and any copyright and other intellectual property rights in or arising out of or in connection with the Training Course.

6.2 You acknowledge that, in respect of any third-party intellectual property rights, your use of any such intellectual property rights is conditional on us obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.

**7. LIMITATION OF LIABILITY**

7.1 Nothing in these Terms shall limit or exclude our liability for: death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors; or fraud or fraudulent misrepresentation.

7.2 Subject to clause 7.1. we shall not be liable to you, 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; we shall not be liable to you or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to the Training Course, if the delay or failure was due to any cause beyond our reasonable control; and

7.3 our total liability to you 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 not exceed the amount of Fees payable by you under the Contract.

7.4 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7.5 This clause 7 shall survive termination of the Contract.

**8. TERMINATION**

8.1 Without limiting our other rights or remedies, either of us may terminate the Contract with immediate effect by giving written notice to the other party if:

8.2 the other party goes into liquidation, becomes bankrupt, has a receiver appointed, makes a composition or voluntary arrangement with its creditors or enters administration, or a moratorium comes into force in respect of the other (within the meaning of the Insolvency Act 1986);

8.3 the other party ceases, or threatens to cease, to carry on business;

8.4 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 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; or 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 clauses 8.1.1 to 8.1.3 (inclusive).

8.5 Without limiting our other rights or remedies, we may terminate the Contract or any other contract between you and us with immediate effect by giving you written notice if you fail to pay any amount due under the Contract or any other contract between you and us on the due date for payment.

8.6 Without limiting our other rights or remedies, we shall have the right to terminate the Contract by giving you 7 days' written notice.

**9. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

9.1 you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of any Training Courses provided but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;

9.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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

9.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**10. ASSIGNMENT AND SUBCONTRACTING**

You shall not, without our prior written consent, assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Contract.

**11. NOTICES**

A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

**12. WAIVER**

12.1 A waiver of any right under the Contract 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 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.

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

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**13. SEVERANCE**

13.1 If a court or any other competent authority finds that any provision or part provision of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the remainder of the Contract shall not be affected.

13.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**13.3 THIRD PARTIES**

A person who is not a party to the Contract shall have no rights under or in connection with it.

**14. VARIATION**

Except as set out in these Terms, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by us.

**15. GOVERNING LAW AND JURISDICTION**

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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

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