

Sellers General Terms and Conditions

CONDITIONS OF BUSINESS

1 INCORPORATION OF CONDITIONS

- 1.1 These Conditions and the Proposal are the only terms and conditions on which The Outsourced Training Company (TOTC) gives quotations or supplies the services (the "Services") set out in the written proposal provided by TOTC (the "Proposal") and any other terms or conditions provided or referred to by the person using the Services of TOTC ("the Client") or TOTC or its servants or agents whether in writing or orally are hereby expressly excluded.
- 1.2 No variation of these Conditions or of the Proposal shall be effective unless made in writing and signed by or on behalf of TOTC.

2 ACCEPTANCE OF INSTRUCTIONS

A contract shall exist between the parties upon the Proposal being signed by or on behalf of each of the parties or by written confirmation of the Proposal being received by and being acceptable to TOTC (the "Contract"). Each instruction when accepted in accordance with these Conditions constitutes a separate Contract.

3 FEES AND EXPENSES

- 3.1 All fees and expenses are quoted exclusive of VAT (which shall be payable at the rate prevailing when payment is due) and are estimates only. Unless otherwise agreed in writing fees are payable in accordance with the Proposal and cover only those items expressed in the Proposal to be so covered.
- 3.2 The figures for fees and expenses appearing in the Proposal, being estimates only, are subject to increase when final figures are capable of being ascertained by TOTC.
- 3.3 The Client shall reimburse TOTC all incidental costs and expenses incurred by TOTC in connection with the provision of the Services for the Client.
- 3.4 In addition to any fees costs and expenses referred to above the Client will pay to TOTC all costs and expenses incurred by TOTC if the Client:-
(a) instructs TOTC to carry out any additional work not covered in the Proposal or in any way changes modifies or alters its requirements; or
(b) fails to meet its obligations under Clause 6.1 and TOTC expends extra time or incurs any extra expense as a result.

4 PAYMENT

- 4.1 Unless otherwise stated in the Proposal payment shall become due and be made by the Client on presentation of an invoice by TOTC.
- 4.2 TOTC reserves the right to charge interest on payments outstanding after the due date for payment at the rate of three per cent per annum above the Base Lending Rate of TOTC's principal bankers for the time being in force, calculated on the outstanding balance (including interest) due from the due date for payment until receipt by TOTC of payment

5 TIME OF SUPPLY

- 5.1 TOTC shall make all reasonable efforts to supply the Services on the dates and at the times requested by the Client but any dates or times quoted by TOTC for supply of Services are estimates only and TOTC shall not be liable for failure to meet such estimates or for any consequential losses (including loss of profit) costs charges or expenses incurred by the Client and the Client shall not be entitled to refuse to accept the Services because of any such failure.
- 5.2 TOTC will usually carry out any work pursuant to the Services during normal business hours but expressly reserves the right to carry out such work or any other part of the Services at other times should it be necessary or desirable to do so in TOTC's opinion

6 CLIENT CO-OPERATION

- 6.1 The Client will provide to TOTC such assistance of a suitable nature and quality and at the appropriate times as TOTC may request from time to time for the proper provision of the Services.
- 6.2 TOTC shall not be liable for and the Client shall fully indemnify and hold harmless TOTC against any and all damage loss costs charges and expenses incurred due to delay in supply of the Services caused by the Client's failure to perform its obligations under Clause 6.1.
- 6.3 If the Client fails to meet its obligations under Clauses 6.1 and/or 6.2 then without prejudice to TOTC's other rights TOTC shall be entitled by notice to the Client forthwith to cancel the Contract in which event Clause 7 shall have effect as if the Contract had been cancelled at the request of the Client.

7 CANCELLATIONS OF CONTRACT

In its absolute discretion TOTC may at any time permit cancellation of the Contract provided that TOTC shall insist that:

- 7.1 the value of the Services which have already been supplied and any expenses which shall have already been incurred shall be payable immediately upon delivery of TOTC's invoice for such Services (if not already due in accordance with Clause 4); and
- 7.2 the Client shall forthwith pay to TOTC a sum equal to any fees or expenses which TOTC is or will become obliged to pay to third parties as a result of such cancellation; and
- 7.3 a sum equal to 50 per cent of the value (in TOTC's reasonable estimation) of the outstanding portion of the Contract shall be payable immediately upon delivery of TOTC's invoice for such Contract (if not already so payable in accordance with Clause 4).

8 CANCELLATIONS OF COURSE

If the client chooses to cancel a course the following shall apply:

- 8.1 TOTC has a 10 working days cancellation policy. Any cancellation falling within this 10 working days of scheduled delivery will require the Client to pay 100% of course value and any other third parties associated costs incurred.
- 8.2 This does not imply that the entire contract is cancelled, merely the course which they cancelled.

9 EXCUSABLE DELAYS

Neither party shall be liable for failure to perform under the Contract due to causes or events beyond reasonable control and without the fault or negligence of the parties such as acts of God, fire, floods or strikes. Nothing in this condition shall limit Client's option to terminate at any time under the condition 7.

10 PROPERTY AND CONFIDENTIALITY

All documents, information and any other material supplied by one party to the other in connection with the Services or the Contract shall remain the property of the party supplying them and be treated as confidential by the party to whom they are supplied and each party undertakes to the other not to disclose or permit to be disclosed any such document, information or materials to any third party (except where required by law) without the express written consent of that other party.

11 WARRANTY AND LIABILITY

TOTC warrants that the Services are carried out with all reasonable skill and care. Subject to the provisions of this clause TOTC will accept liability for deficiencies in the Services (including deficiencies in any report or other data or material supplied by TOTC to the Client) caused by breach of the Contract by TOTC or negligence of TOTC. Negligence shall be as defined in Section 1(1) of the Unfair Contract Terms Act 1977. Except in the case of death or personal injury arising from the negligence of TOTC, the liability of TOTC for breach of the Contract or negligence or otherwise in relation to the performance of the Services shall in no case exceed the fee for the Services. TOTC shall in no circumstances be liable for any other loss, charges, damages, indirect or consequential loss (including loss of profit) or expenses of any kind. The Client acknowledges that all possible circumstances in which the Services may have some relevance cannot be foreseen at the time the Services are carried out. The Client also acknowledges that TOTC would not be able to provide the Services at the agreed fee if TOTC were obliged to accept all far reaching responsibilities.

12 LIABILITY FOR REPORTS

- 12.1 The scope of any report produced by TOTC as defined in the Proposal shall be limited to matters specifically identified in the Proposal or indicated in the report. Except where TOTC has otherwise agreed in writing, TOTC shall not be liable for any reliance placed on a report by any person other than the Client or for any reliance placed on a report which is not specified in or

envisaged by the Proposal. TOTC shall not be liable for any loss caused by a report where such loss arises as a result of the provision to TOTC of false, misleading or incomplete information by the Client or as a result of the acts or omissions of any other person

12.2. Any report shall only be valid and may only be relied upon for any period stated in the report. TOTC accepts no responsibility for the accuracy of information contained in the report after the stated period of validity. Where so indicated by TOTC any report is to be regarded as expressing the opinion only of TOTC and is not to be relied upon as being factually correct.

13 RETENTION OF TITLE

Notwithstanding completion of the Services or any granting of credits any report or other documentation produced by TOTC pursuant to the Contract shall remain the absolute property of TOTC until payment of all sums due from the Client to TOTC.

14 INDEMNITY

The Client shall fully indemnify and hold harmless TOTC on an after tax basis for any costs, charges, losses, damages and expenses incurred by TOTC due to any proceedings action claim or demand brought against TOTC as a result of TOTC's compliance with the Client's instructions or reliance on or use of any information or materials supplied by the Client.

15 INTELLECTUAL PROPERTY

15.1 TOTC shall retain at all times the copyright and all other intellectual property rights capable of subsisting in the reports and other data or material supplied by TOTC to the Client, but for the avoidance of doubt TOTC will not publish or otherwise disclose any report supplied to the Client or any identifiable data contained therein without the Client's prior written consent.

15.2 The Client shall, subject to payment in full of all fees costs and expenses payable to TOTC under the Contract, have permission from TOTC to copy any report which TOTC may prepare for the Client under the Contract so long as the same is copied in full only (and not in part) without comments, abridgement, alteration or addition and no summary, quotation, abridgement or alteration may be made to the report without TOTC's prior written consent. The Client shall not copy any such report other than in full and/or with any comment, abridgement, alteration or addition without TOTC's specific written consent. Such permission shall not extend to the publication or issuing of such report or copies thereof, or any other acts, for which the Client must obtain a specific written consent from TOTC (not to be unreasonably withheld).

16 SUBCONTRACTORS

TOTC reserves the right to subcontract all or any part of the Services.

17 DISCLOSURE AND SAFETY

17.1 The Client warrants that it has made full and fair disclosure to TOTC of all facts, data, materials, opinions and any other information in its possession or within its knowledge in respect of the Services required of TOTC under the Contract.

17.2 The Client acknowledges that TOTC maintains stringent health and safety standards and TOTC hereby expressly reserves the right to delay, postpone or cancel all or any part of the Services without notice should it be necessary in TOTC's opinion to do so in the interests of health and safety. In the event that TOTC does delay, postpone or cancel any part of the Services TOTC shall have no liability whatsoever to the Client as a result.

18 TOTC's EMPLOYEES

The Client shall not solicit or endeavour to entice away or discourage from being employed by TOTC any employee, agent or subcontractor of TOTC engaged in providing the Services and the provisions of this Clause shall remain in force notwithstanding any termination of the Contract or completion of the Services for a period of six months after such completion or termination.

19 FORCE MAJEURE

TOTC shall not be liable in any way for any loss or damage arising directly or indirectly, through or in consequence of supply of the Services being prevented or delayed by events, matters or circumstances beyond the control of TOTC.

20 ASSIGNMENT

The Contract is personal to the Client who shall not assign or charge the benefit thereof without TOTC's prior written consent.

21 DEFAULT, INSOLVENCY, ETC

If the Client shall be in default or commit a breach of these Conditions, or shall make or offer to make any arrangements with creditors, commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against him, or if any distress or execution shall be levied upon the Client's property or assets or, the Client being a limited company, any resolution or petition to wind up the Client's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented or if an administration order shall be made against the Client or if a receiver of the undertaking, property or assets or any part thereof of the Client (being a limited company) shall be appointed, then without prejudice to any other right or remedy available to TOTC may without notice:-

- (a) cancel the Contract; and
- (b) either by an agent or itself have access to the Client's premises for the protection and removal of any reports of other material at any time and from time to time in which the property shall not have passed from TOTC to the Client in accordance with Clause 10.

22 NO WAIVER

The granting by TOTC to the Client of time or any other indulgence forbearance or concession shall in no way prejudice or constitute a waiver of TOTC's entitlement to enforce any of its rights under these Conditions or the Contract.

23 NOTICES

23.1 Notices shall be made in writing in English and posted in a first class pre-paid envelope or sent by facsimile transmission to the Client's or TOTC's address as shown on the Proposal or to the address which one party has notified to the other that notices should be sent.

- 23.2 A notice shall be deemed to have been given:
- (a) where sent by post to a UK address from a posting box within the UK, forty-eight hours after posting, and where sent by airmail post in any other circumstances, 10 days after posting; and in proving such service it shall be sufficient to show that the envelope was properly addressed and put into the post; or
 - (b) where sent by facsimile transmission during the normal business hours of the recipient, at the time it is sent provided that the sender is in possession of a legible transmission confirmation report.

24 PROPER LAW

The validity construction and performance of the Contract shall be governed by the Law of England and the parties hereby submit to the sole and exclusive jurisdiction of the English Courts for the resolution of all disputes arising under the Contract.

25 SEVERANCE

These Conditions shall apply in full save that if any Act of Parliament or other statutory provision for the time being in force shall avoid or make unenforceable any of the provisions hereof these Conditions shall be deemed to continue to apply but with the exclusion of the said provision(s).

I have read and agreed to above terms of trading

Name (Printed).....On behalf of.....

Signed.....date.....

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