

East Saxon Training Terms and Conditions for Supply of Services

The Buyer's attention is particularly drawn to Clause 9

1. Definitions

Seller	Means David Hewitt (sole trader trading as East Saxon Training) of Coggeshall, Essex.
Buyer	The company or person who buys or agrees to buy the Services from the Seller.
Conditions	The terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing/email by the Seller.
Price	The price for the Services, excluding VAT and any travel costs, and exceptional out of pocket expenses incurred when delivering the Services, set out in the Order.
Order	The Buyer's order for the supply of Services, as set out in the exchange of written/email correspondence prior to the delivery of the services.
Services	The services supplied by the Seller to the Buyer as set out in the Order.
Seller Materials	Has the meaning set out in clause 12.1.6.

2. Conditions

- 2.1 These Conditions shall form the basis of the contract between the Seller and the Buyer in relation to the sale of Services, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase or any other conditions which the Buyer may purport to apply under any purchase order or confirmation of order or any other document.
- 2.2 All orders for Services shall be deemed to be an offer by the Buyer to purchase Services from the Seller pursuant to these Conditions.
- 2.3 Commencement of the Services shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 These Conditions may not be varied except by the written agreement of the Seller.
- 2.5 These Conditions represent the whole of the agreement between the Seller and the Buyer. They supersede any other conditions previously issued.

3. **Price**

The Price shall be the price quoted in the correspondence prior to the commencement of services.

4. **Payment and Interest**

- 4.1 Payment of the Price shall be due prior to the commencement of the Services, or within 30 days of the date of the Seller's invoice, whichever is the sooner.
- 4.2 Interest on overdue invoices shall accrue from the date when payment becomes due calculated on a daily basis until the date of payment at the rate of 8% per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment.
- 4.3 The Buyer shall pay all accounts in full and not exercise any rights of set-off or counterclaim against invoices submitted by the Seller.

5. **Supply of Services**

The Seller agrees:

- 5.1 To undertake and provide the Services in accordance with any brief and deadline agreed with the Buyer and;
- 5.2 To manage and carry out the Services to the best of their ability and to be solely responsible for how the services are provided;
- 5.3 To the best of their ability, promptly and faithfully to meet the deliverables and deadlines agreed with the Buyer;
- 5.4 the Seller is free to undertake and accept other engagements, except those which lead or might lead to any conflict of interest between the Seller and the Buyer during his or her appointment;
- 5.5 To use such suitably qualified and experienced personnel as they may from time to time deem appropriate;
- 5.6 The Seller has the right to supply a substitute of equivalent knowledge and expertise and acknowledges that the Buyer has the right to refuse the replacement if, in the reasonable view of the Buyer, the replacement is not sufficiently qualified to undertake the work. Where substitution occurs, the Seller will remain responsible for its obligations under the agreement and will be responsible for the payment of the replacement, so that there will be no further payments outside of the agreed terms to pay for any handover period between the original and the replacement.
- 5.7 To keep the Buyer informed of progress on the Services in which they are engaged. While the Seller's method of working is entirely their own and they are not subject to the control of the Buyer, they shall nevertheless comply with any reasonable requests of the Buyer (or its clients) which do not impact upon the Seller's method of working.

6. **Buyer's obligations**

- 6.1 The Buyer shall:
 - 6.1.1 Ensure that the terms of the Order are complete and accurate;
 - 6.1.2 Co-operate with the Seller in all matters relating to the Services;
 - 6.1.3 Provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises as reasonably required by the Seller to provide the Services;

- 6.1.4 Provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 6.1.5 Obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - 6.1.6 keep and maintain all materials, equipment, documents and other property of the Seller (Seller Materials) at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation.
- 6.2 If the Seller's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (Buyer Default):
- 6.2.1 the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
 - 6.2.2 the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 12.2; and
 - 6.2.3 The Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

7. Confidentiality

- 7.1 The Seller hereby agrees that during the course of their engagement under this Agreement they are likely to obtain knowledge of trade secrets and also other confidential information with regard to the business and financial affairs of the Buyer and those of the Buyer's clients, customers and suppliers details of which are not in the public domain ('Confidential Information') and accordingly the Seller hereby undertakes to and covenants with the Buyer that they shall not use the Confidential Information other than during the continuance of this Agreement and in connection with the provision of the Services.
- 7.2 The restrictions set out in Clause 7 shall cease to apply to information or knowledge which comes into the public domain otherwise than by reason of the default of the Seller.

8. Intellectual Property Rights

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Seller.
- 8.2 The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Seller obtaining a written licence from the relevant licensor on such terms as will entitle the Seller to license such rights to the Buyer.
- 8.3 All Seller Materials are the exclusive property of the Seller.

9. Limitation of Liability: THE BUYER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 9.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 9.1.2 fraud or fraudulent misrepresentation;
 - 9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 9.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 9.1.5 defective products under the Consumer Protection Act 1987.
- 9.2 Subject to clause 9.1:
- 9.2.1 The Seller will use reasonable endeavours to train the Buyer and their employee(s) who attend the Sellers training course(s) in the subject(s) covered by the training course(s) purchased in the Order but the Sellers training course(s) are not designed or intended to negate the need for the Buyer to ensure all their staff are sufficiently skilled and competent in the subject(s) to safely carry out their work, specifically the Buyer and their employee(s) will require a period of supervision and on the job training following the training course(s) to ensure they have retained all essential information for their job, and this is the sole responsibility of the Buyer.
 - 9.2.2 The Seller shall under no circumstances be liable to the Buyer, 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
 - 9.2.3 the Seller's total liability to the Buyer 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 Price for the Services.
- 9.3 This clause 9 shall survive termination of the Contract.

10. **Termination and Cancellation of Agreement**

- 10.1 Either party shall have the right at any time to terminate this Agreement by not less 7 calendar days' notice in writing/email to the other party.
- 10.2 If the Buyer cancels or asks to rearrange to a later date any training course set out in the Order with the Buyer, the Buyer will be liable to pay the full Price to the Seller unless more than 7 calendar days' notice in writing/email is given the Seller.
- 10.3 The Seller may cancel the contract at any time in exceptional circumstances including illness, loss of means of transportation (including exceptional weather, traffic accidents and public transport strike action), family emergency and other reasonable unforeseen circumstances that prevent the Seller or their substitute from commencing the Services. In these circumstances the Seller will not be liable for any costs incurred by the Buyer as a result of cancellation, but the Buyer will be entitled to a full refund (if the Price has already been paid to the Seller) for the training course that was not delivered as a result of these exceptional circumstances.

11. **Consequences of Termination**

- 11.1 Upon the expiration or termination of the engagement under this Agreement for whatsoever cause, the Seller shall forthwith deliver up to the Buyer or its authorised representative all its property, including all equipment, materials, tools, keys, swipe cards, computer hardware and/or software, books, documents, account records and any other papers which may be in his or her possession, custody or control and which are the property of the Buyer or which otherwise relate in any way to the business or affairs of the Buyer and no copies of the

same or any part thereof shall be retained by him or her. He or she shall then (if required by the Buyer) make a declaration that the whole of the provisions of this clause have been complied with.

- 11.2 The Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Seller may submit an invoice, which shall be payable immediately on receipt;
- 11.3 The Buyer shall, within a reasonable time return all of the Seller's equipment. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of the Seller's equipment. Until they have been returned or repossessed, the Buyer shall be solely responsible for their safe keeping;
- 11.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 11.5 The termination of this agreement howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.

12. Insurance

The Seller further warrants to the Buyer that they will:

- 12.1 Take out and maintain throughout the term of this Agreement, adequate professional indemnity insurance to protect themselves against any liabilities arising out of this Agreement and shall produce, at the request of the Buyer, a copy of the insurance policy or policies and relevant renewal receipts for inspection by the Buyer;
- 12.2 Take out and maintain throughout the term of this Agreement, adequate public liability insurance coverage minimum £500,000 cover to protect themselves against any liabilities arising out of this Agreement in respect of all and any contractors/employees they utilise to carry out the Services and shall produce, at the request of the Buyer, a copy of the insurance policy or policies and relevant renewal receipts for inspection by the Buyer.

13. Data Protection and Data Processing

- 13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.

14. No Employment or Partnership

- 20.1 The Seller is an independent contractor and nothing in this Agreement shall render or be deemed to render the Seller an employee, worker or agent of the Buyer and the Seller shall not hold himself or herself out as such. This Agreement does not create any mutuality of obligation between the Seller and the Buyer and neither party seeks to create or imply any mutuality of obligation between the parties in the course of the performance of this engagement or during any notice period. The Buyer is not obliged to offer work to the Seller, nor is the Buyer obliged to accept work where it is offered.
- 14.2 The Seller may choose to delegate performance of the Services to such suitably qualified and experienced personnel as he or she may from time to time deem appropriate. The Buyer has the right to refuse the replacement if, in the reasonable view of the Buyer, the replacement is not sufficiently qualified to undertake the work. The Seller must provide details of the name of the delegate/substitute. The Seller will be responsible for remunerating the delegate/substitute, such that there will be no further payments outside of the agreed terms to pay for any handover period between the Seller and the delegate/substitute. When a delegate/substitute is appointed, the provisions relating to sub-processor obligations under Clause 19 will apply.
- 14.3 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Seller shall be fully responsible for and shall indemnify the Buyer for and in respect of:

14.3.1 Any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law;

14.3.2 Any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Seller or any substitute against the Buyer arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the Buyer.

14.4 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

15. Notices/Communications

15.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing, addressed to that party at its registered office 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, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or e-mail.

15.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address stated in this Agreement or to such other address (being in Great Britain) as the addressee may from time to time have notified for the purpose of this Clause; 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 e-mail, one Business Day after transmission.

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

16. Entire Agreement

16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

17. Force Majeure

17.1 If either party to this Agreement is prevented or delayed in the performance of any of its respective obligations under this Agreement by "force majeure", then such party shall be excused the performance for so long as such cause of prevention or delay shall continue;

17.2 For the purpose of this Agreement 'force majeure' shall be deemed to be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of such party and inter alia including, but not limited to the following:

23.2.1 Strikes, lockouts or other industrial action;

23.2.2 Terrorism, civil commotion, riot, invasion, war threat or preparation for war;

23.2.3 Fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic, bad weather or other natural physical disaster;

23.2.4 Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

18. Assignment and Other Dealings

18.1 The Business may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

18.2 The Buyer shall not, without the prior written consent of the Seller, 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 this Agreement.

19. Survival of Causes of Action

The termination of this Agreement howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.

20. Severability

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the illegal or unenforceable provision eliminated.

21. 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 under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor 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.

29. Variation

29.1 No variation of this Agreement shall be effective unless it is in writing and signed by both parties (or their authorised representatives).

30. Law and Jurisdiction

30.1 This Agreement 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.

30.2 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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

SIGNED:



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David Hewitt, East Saxon Training