

Empeiria Training - Standard Terms and Conditions of Training

1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions (the “Terms and Conditions”) the following expressions shall have the following meanings:

“Certificate” means a document issued by the Company to the Delegate confirming that the Delegate has satisfactorily completed the Training Session.

“Claim” means any cost, claim, expense, fines, penalties, judgements (including legal reasonable expenses), damage, loss, liability or rights of action.

“Charges” means the charges as set out in the Proposal and payable by the Customer for the Training in accordance with Clause 4.

“Company” means Empeiria Training, a company registered in England under Company Number 13731511, with its registered office at Technology Centre, Inward Way, Ellesmere Port, United Kingdom, CH65 3EN.

“Company Group” means the Company and its Affiliates and any of its and their Personnel and subcontractors of any tier but shall not include any member of Business Customer Group.

“Consequential Loss” means (i) any indirect, special exemplary, incidental or consequential loss or damage of any nature however caused or arising whether under contract, by virtue of any fiduciary duty or in tort (including negligence), as a consequence of breach of any duty (statutory or otherwise) or under any other legal doctrine or principle whatsoever whether or not recoverable at common law or in equity; and (ii) loss and/or deferral of production, loss of product, loss of use, loss of bargain, contract expectation, business reputation or opportunity and loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i) and whether or not foreseeable at the Contract Start Date.

“Contract” means the Proposal and the Terms and Conditions.

“Contract Start Date” means the date the Proposal is accepted by the Customer;

“Customer” means the company which purchases the Training from the Company by signing and accepting a Proposal.

“Customer Data” the data provided by the Customer for the purpose of facilitating the Training.

Data Protection Legislation: means:

- (a) the General Data Protection Regulation (GDPR), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003; and

- (b) any other legislation in force from time to time relating to privacy and/or the Processing of Personal Data and applicable to the provision and receipt of Training under the Contract.

“Delegate” means an individual or representative scheduled by the Customer to attend the Training.

“Force Majeure” means any cause or event which is not within the reasonable control of the Party affected thereby and which that Party is unable to overcome by the exercise of reasonable due diligence and shall include but not be limited to illness of Act of God, strikes (excluding strikes occurring solely among the employees of Consultant or its Subcontractors) or other industrial disturbances of a general nature, acts of a public enemy, protestor action, terrorism, wars (whether declared or not), acts of governments, sanctions, embargoes, blockades, insurrections, riots, epidemics, landslides, floods, earthquakes, volcanic activity, ash clouds, hurricane, lightning, civil disturbances, explosions.

“Party” means either the Customer or the Company and the “Parties” means the Customer and the Company together.

“Personal Data” has the meaning given to it in the Data Protection Legislation.

“Processing” has the meaning given to it in the Data Protection Legislation.

“Proposal / Quote” means the proposal setting out the details of the Training to be provided and the basis upon which the Company proposes to provide them, sent by the Company to the Customer, following an indication by the Customer that it wishes to obtain training services from them.

“Terms” means these Terms and Conditions of Training.

“Training” means the training to be supplied by the Company to the Customer as described in the Proposal.

“Training Session Materials” means any materials provided to the Customer by the Company at the Training, for example, manuals, copies of slides, handouts and other similar materials, in whatever form.

“Working Day/s” means a day or days on which banks are open for business as usual in England.

- 1.2. Clause headings and table of contents are for convenience only and shall not affect the interpretation of these Terms.
- 1.3. The words “including”, “include”, “includes” “other” or any similar variation shall be construed as meaning “including but not limited to”, “by way of example” and “including without limitation”, and the rule of construction known as the eisdem generis rule shall be disappplied.
- 1.4. Day(s) means calendar rather than business days, unless otherwise stated.
- 1.5. Reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

- 1.6. Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- 1.7. Unless the context otherwise requires, references:
 - 1.7.1. to one gender include all genders, and reference the singular include the plural and vice versa
 - 1.7.2. to any statute, statutory provision or regulation, are references to that statute, statutory provision or regulation, as from time to time amended, extended or re-enacted.

2 BASIS OF THESE TERMS AND CONDITIONS

- 2.1 These Terms and Conditions shall come into effect upon receipt by the Company of an electronic or hard copy of the Proposal signed by the Customer, at which point these Terms and Conditions shall be deemed incorporated into the Proposal.
- 2.2 [Any Proposal is only valid for acceptance for a period of 30 calendar days from its date of issue.]
- 2.3 The terms of the Contract apply 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.
- 2.4 If there is an inconsistency between any of the provisions of these Terms and Conditions and the provisions of the Proposal, the provisions of these Terms and Conditions shall prevail as between the parties.
- 2.5 The Contract constitutes the entire agreement between the Company and the Customer in relation to the provision to the Customer of Training. The Contract replaces any prior arrangements or agreements made between the Customer and the Company relating to the subject matter hereof unless otherwise agreed to in writing between the Customer and the Company and no amendment or variation to the Contract is permitted, except (i) with the prior written agreement of the Company; or (ii) if necessary to comply with any applicable law or regulatory requirement. The Customer acknowledges that it is not relying on any statement, implied warranty or representation made by or on behalf of the Company other than those expressly set out in the Contract.
- 2.6 If any provision of the Contract becomes void or otherwise unenforceable in whole or in part, the validity of the remainder of the Contract shall not be affected.
- 2.7 If the Company fails to enforce, or delays in enforcing, its rights or remedies under the Contract, such failure or delay shall not operate as a waiver of that right or remedy and shall not prevent the Company from exercising that right or remedy in the future.
- 2.8 The Contract is not intended to be for the benefit of any third party and shall not confer any rights on any other person under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

3 SUPPLY OF THE TRAINING

- 3.1 The Company shall use reasonable endeavours to supply the Training to the Customer in accordance with the terms of the Contract in all material respects and will perform the Training with reasonable skill and care. Any other conditions or warranties whether express or implied as to the quality of the Training are hereby expressly excluded.
- 3.2 [The Company shall use reasonable endeavours to meet any specified training date(s) but any such dates shall be anticipated dates only and may be subject to alteration.]
- 3.4 It is the responsibility of the Customer to ensure that the Delegates meet the prerequisites of the Training on which they are booked and the course content meets their requirements.
- 3.5 All Training is delivered solely in English.

4 CHARGES AND PAYMENT

- 4.1 [The Charges for the Training shall be as set out in the Proposal]
- 4.2 The Charges do not include travel, accommodation, meals or other related expenses, which shall be the responsibility of the Customer, unless explicitly stated in the Proposal.
- 4.3 The Customer shall pay any invoice submitted by the Company within 30 calendar days of the date of invoice, [and in any event, prior to the Training taking place, to a bank account provided on the invoice by the Company.]
- 4.4 Failure by the Customer to pay any Charges when they fall due may, at the Company's discretion, result in:
- 4.4.1 the Delegates' place on the Training withdrawn;
 - 4.4.2 the Company ceasing to provide the Training; and/or
 - 4.4.3 the Company withholding any certificate due to the Delegates from the Training.
- 4.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company any sum due under the Contract on the due date the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this clause will accrue each day at 4% per annum above the Bank of England's base rate from time to time.
- 4.6 All sums payable to the Company under the Contract are exclusive of VAT and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice.
- 4.7 The Customer shall not entitled to withhold monies due to the Company under any other contract, agreement, arrangement or order with the Company as set off against disputes under the Contract, nor shall it be entitled to withhold monies due under the Contract as set off against disputes under any other contract, agreement, arrangement or order.

- 4.8 If the Customer disputes in good faith, any part of the Company's invoice, the Customer shall pay any undisputed part within thirty (30) days of the date of the invoice.
- 4.9 Should there be any changes in any law, rule or regulation affecting the Contract, or changes in the interpretation of any law, rule or regulation affecting the Contract, that affect the Charges, the Company shall be entitled to any change which reflects the change in the law, rule or regulation and the impact of such change on the Charges.
- 4.10 The Company reserves the right to assess the financial status of any organisation making a booking or in the process of making a booking for Training and also reserves the right to require payment prior to confirming a booking.

5 CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

5.1.1 Co-operate with the Company in all matters relating to the Training;

5.1.2 provide the Company, its employees, consultants and subcontractors (as applicable) with any information which they may reasonably require in the organisation and provision of the Training, including but not limited to, details in respect of the Delegate(s) and ensure that such information is complete and accurate in all material respects;

5.1.3 where Training is being delivered at the Customer's premises, provide the Customer with (i) access, training space and any equipment necessary for the delivery of the Training; and (ii) such facilities as are reasonably notified to the Customer in advance of the Training.

6 CANCELLATION OF TRAINING

6.1 The Company reserves the right to cancel Training at any time without incurring additional liability to the Customer or any Delegates. In such circumstances, the Company will offer (at its sole discretion) alternative dates, a full refund or credit note.

6.2 The Company will not be liable for any Consequential Loss suffered by the Customer arising as a result of a cancellation pursuant to clause 6.1 of these Terms and Conditions.

6.3 [The Customer may cancel the course booking by notifying the Company in writing by acknowledged email or by recorded delivery as soon as reasonably practicable. The Customer shall be liable to pay 100% of the Charges where less than [30 calendar days' notice] is given of a cancellation.]

7 GENERAL DATA PROTECTION REGULATION

7.1 The Customer shall own all right, title and interest in and to all of the Customer Data.

7.2 The Customer grants the Company an irrevocable, unlimited and royalty-free licence to use the Customer Data provided to the Company for the purposes of providing the Training.

7.3 Each party warrants that for the purposes of this Agreement it:

7.3.1 shall comply with the provisions of the Data Protection Legislation, including without limitation that it:

- (a) shall use Personal Data in accordance with the permissions or consents obtained from the data subjects (as defined in the Data Protection Legislation) or otherwise in accordance with the Data Protection Legislation;
 - (b) shall communicate to the other party the terms of any permissions or consents obtained from the data subjects;
 - (c) shall have in place appropriate technical and organisational security measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and shall take all reasonable steps to ensure the reliability of its personnel who have access to such Personal Data and to impose obligations of confidentiality upon such personnel and to ensure that such personnel are aware of their responsibilities under the Data Protection Legislation;
 - (d) shall not transfer Personal Data outside the European Economic Area save in accordance with the Data Protection Legislation;
 - (e) shall comply with any request or notice it receives from a data subject in its capacity as a data controller;
- 7.3.2 shall upon request provide such assistance as is reasonably necessary to the other party to enable that party to comply with its obligations as a data controller (as defined in the Data Protection Legislation);
- 7.3.3 shall inform the other party as soon as reasonably practicable of the discovery of any actual or suspected data-breach relating to the Processing of Personal Data in connection with this Agreement;
- 7.3.4 shall, except to the extent prohibited by applicable law, inform the other party upon receipt of a complaint from a data subject or if approached by any regulatory body in connection with its compliance with the Data Protection Legislation in connection with the Contract;
- 7.3.5 shall, except to the extent prohibited by applicable law, consult the other party in good faith as to the timing, manner and content of any response to a complaint from a data subject or approach by any regulatory body in connection with compliance with the Data Protection Legislation in connection with the Contract.

8 Confidentiality

- 8.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other party belongs.
- 8.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations.
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 8.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations in relation to training delivery.

9 INTELLECTUAL PROPERTY RIGHTS

All copyright, design rights and other intellectual property rights used, created or embodied in or arising out of or in connection with the Training, including the Training Session Materials remain the sole property of the Company and the Customer shall not and shall procure that the Delegate shall not dispute the ownership of such rights. Any materials and information (in whatever form and including the Training Session Materials) provided by the Company in connection with the Training Session shall not be copied, distributed or made available in whole or in part to third parties or re-used and shall be used only to enable the Delegate to properly participate in the Training Session. Subject to the aforementioned restrictions, Delegates are entitled to keep, for their own use only, any Training Session Materials provided to them. The Customer must procure however, that any other materials, in whatever format, issued to the Delegates are returned to the Company on the earlier of the completion of the Training Session or when requested by the Company. The Customer shall not and will procure that the Delegate shall not copy or otherwise reproduce in any form, any Training Session Materials or other materials provided by the Company without the Company's prior written consent.

10 COMPLETION OF SESSION AND COMPETENCE

All aspects of the Company's Training Sessions must be completed to the specified standard(s) to receive certification. Should a Delegate successfully complete a Training Session, a Certificate will be issued. Should the Registrant fail to participate in any element of the Training Session, the Company will issue a letter of non-attainment to the Customer notifying them that a Delegate has failed to satisfactorily complete a Training Session.

11 FORCE MAJEURE

In the event that the Company is rendered unable, wholly or in part, by Force Majeure to carry out its obligations hereunder, upon the Company giving notice and reasonably full particulars of such Force Majeure to the Customer within a reasonable time after the occurrence of the cause relied upon, the obligations of the Company, so far as they are affected by such Force Majeure, shall be suspended during but no longer than the continuance of the inability so caused and such further period thereafter as shall be reasonable in the circumstances. The Company shall use reasonable endeavours to eliminate the circumstances of Force Majeure relied on to enable it to resume the full performance of its obligations and minimise the effects is unable to provide any Training, or any part of any Training, by reason of Force Majeure, the Company shall be entitled to postpone or cancel that Training, or part of it. The Company shall use reasonable endeavours to reschedule the Training to a mutually acceptable date if possible.

12 TERMINATION

- 12.1 The Company may terminate the Contract with immediate effect if:
- 11.1.1 the Customer materially breaches any of the provisions of the Contract and fails to remedy such breach (if capable of remedy) within such reasonable period as the Company specifies;
 - 12.1.2 the Customer fails to pay any amount due under the Contract on the due date for payment;
 - 12.1.3 the Customer takes any step or action in connection with it entering administration, provisional liquidation, bankruptcy or any composition or arrangement with its creditors (other than in relation to a solvent restructuring) being wound up (whether voluntarily or by order of the court, unless for the purpose of solvent restructuring) having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 12.1.4 the Customer suspends or threatens to suspend or ceases or threatens to cease or carry on all or a substantial part of its business;
 - 12.1.5 the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.2 Upon termination, the Customer shall:
- 12.2.1 immediately pay to the Company in full any outstanding monies due to the Company pursuant to the Contract;
 - 12.2.2 return any of the Training Materials which have not been fully paid for.
- 12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 12.4 Termination of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.5 This clause 12 shall survive termination of the Contract.

13 LIMITATION OF LIABILITY

- 13.1 The Company does not accept responsibility for anyone acting as a result of information in or views expressed on the Training including Training Session Materials. Opinions expressed are those of individual trainers and not necessarily of the Company. Delegates should take professional advice when dealing with specific situations.

13.2 To the maximum extent permitted by law, the Company shall not be liable for any Consequential Loss of a Customer.

13.3 To the maximum extent permitted by law, the Company's aggregate liability to the Customer shall not exceed the Charges actually paid by the Customer to the Company for the Training giving rise to a claim.

14 COMPLAINTS PROCEDURE

If the Company fails to comply with its obligations under the Contract, the Customer shall advise the Company in writing, marked for the attention of Managing Director, Catherine Ryan, The Technology Centre, Inward Way, Ellesmere Port, CH65 3EN, giving details of the reasons why it believes the Company has not complied with its obligations under the Contract. The Company shall acknowledge the Customer's complaint in writing within seven (7) Working Days of its receipt and thereafter, reply to the complaint in full within thirty (30) Working Days of its receipt. The Parties' day-to-day-representatives shall use all reasonable efforts to resolve the complaint satisfactorily, however if the complaint is not resolved satisfactorily and amicably after such efforts, the Parties shall escalate the complaint to the senior management of the Company and Customer in an increased effort to resolve the complaint satisfactorily and amicably.

14 WAIVER

No failure or delay by the Company to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any or other right or remedy, nor shall it prevent or restrict the 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.

15 SEVERANCE

If any provision or part-provision of the Contract is or becomes illegal, invalid or unenforceable it shall be deemed deleted but that shall not affect the validity and enforceability of the rest of the Contract.

16 NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the Parties or authorise either Party to act as agent for the other and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17 NOTICES

17.1 Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by post or email to such address or email address as has been notified by the Parties for such purposes.

17.2 A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the time sent in respect of an email).

18 THIRD PARTY CLAIMS

A person who is not a Party to the Contract shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

19 GOVERNING LAW AND JURISDICTION

The Contract, and any non-contractual rights or obligations arising out of or in connection with it or its subject matter, shall be governed by and construed in accordance with English law and each of the Parties agrees that the courts of England shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract or its subject matter.