



NEW DIRECTIONS TRAINING (Part of 'New Directions (Holdings) Ltd')
TERMS AND CONDITIONS FOR THE SUPPLY OF TRAINING SERVICES

The Customer's attention is in particular drawn to the provisions of condition 7.9.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this contract apply in these conditions.

"Customer"	the person, firm or company together with any Holding Company Subsidiary or Associated Company who purchases the Services from the Training Provider.
"Confidential Information"	means any information which the Customer may have or acquire (whether before or after the Contract) in relation to the customers, business, assets, staff or affairs of the Training Provider, whether relating to the Contract or otherwise and whether marked "Confidential" or not.
"Contract"	any contract between the Training Provider and the Customer for the supply of Training Services, incorporating these conditions.
"Training Provider"	New Directions Holdings Ltd.
"Services"	any services agreed in the Contract to be supplied to the Customer by the Training Provider (including any part or parts of them).
"Terms"	means these Terms of Business together with any applicable Booking Confirmation Form;

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.4 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply in any way whatsoever).

2.2 No terms or conditions endorsed on, delivered with or contained in the Customers purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These are the only terms and conditions on which the Training Provider will do business. Whilst the Customers order will amount to an unequivocal acceptance of these Terms and Conditions, please sign and return a copy of these Terms and Conditions for our records.

2.4 These conditions apply to all the Training Providers Services and any variation to these conditions and any

representations about the Services shall have no effect unless expressly agreed in writing and signed by The Director of Operations of New Directions Holdings. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Training Provider which is not set out in the Contract. Nothing in this condition shall exclude or limit the Training Provider's liability for fraudulent misrepresentation.

- 2.5 Each request for Services, an order or acceptance of a quotation for the Services by the Customer from the Training Provider shall be deemed to be an offer by the Customer to engage the Services of the Training Provider subject to these conditions.
- 2.6 No request for Services or order placed by the Customer shall be deemed to be accepted by the Training Provider until a written acknowledgement of the same is issued by the Training Provider or (if earlier) the Training Provider performs the Services for the Customer.
- 2.7 The Customer shall ensure that the terms of its request or order and any applicable specifications are complete and accurate.
- 2.8 Any quotation is given on the basis that no Contract shall come into existence until the Training Provider dispatches a written acknowledgement of order to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that the Training Provider has not previously withdrawn it.
- 2.9 Nothing in this Agreement or any arrangement contemplated by it shall constitute either party a partner of the other nor shall the execution, completion and implementation of this Agreement confer on any party any power to bind or impose any obligations to any third parties on the other party or to pledge the credit of the other party.

3. DESCRIPTION

- 3.1 Unless otherwise agreed, the description of the Services shall be as set out in the Training Provider's quotation or acknowledgement of order and the Booking confirmation letter.
- 3.2 All descriptive matter, specifications and advertising issued by the Training Provider and any descriptions or illustrations contained in the Training Provider's 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.

4. PERFORMANCE

- 4.1 The Training Provider warrants to provide Services with all the care and skill to be expected of a qualified and competent provider experienced in undertaking services of the same kind as the Services.
- 4.2 If the Services performed are in breach of Clause 4.1, the Training Provider will at its option make good the performance, re-perform the Service or refund the Customer the relevant price, subject to availability and the performance being proved to be deficient to the reasonable satisfaction of the Training Provider. These obligations will not apply where:
 - 4.2.1 the part of the Service concerned was based on information supplied by or varied from the normal Service at the specific request of the Purchaser; or
 - 4.2.2 the Purchaser failed to notify NDT of the defect within 14 days of the supply.
- 4.3 Any dates specified by the Training Provider for performance of the Services are intended to be an estimate and time for performance shall not be made of the essence by notice. If no dates are so specified, performance shall be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions, the Training Provider shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the performance of the Services (even if caused by the Training Provider's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 Unless otherwise agreed in writing with the Training Provider, the Customer shall not be entitled to cancel any order for Services once the first performance of the Services has been performed by the Training Provider.

5. NON-PERFORMANCE

- 5.1 The performance of the Services as recorded by the Training Provider shall be conclusive evidence of the

Services received by the Customer unless the Customer can provide conclusive evidence proving the contrary.

- 5.2 The Training Provider shall not be liable for any non-performance of the Services (even if caused by the Training Provider's negligence) unless the Customer gives written notice to the Training Provider of the non-performance within 24 hours of the date when the Services would, in the ordinary course of events, have been performed.
- 5.3 Any liability of the Training Provider for non-performance of the Services shall be limited to performing the Services within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Services.

6. TRAINING COURSES – ELIGABILITY & OUTCOMES

- 6.1 It is the Customers responsibility to ensure that students are free from any condition which would affect their capability to undertake their chosen course, and that they have the aptitude to cope with an intensive course of study. The Training Provider welcomes students with disabilities but it remains their employer's responsibility to ensure that they are appropriately supported in their workplace.
- 6.2 The Training Provider should be provided in advance (and for setting up purposes) notification by the Customer of any assistance that a student is likely to need during the running of a course.
- 6.3 If the Training Provider decides that a student has not achieved the learning outcomes of the course and/or the assessment standard (ie. they are referred), then they may subsequently be offered a free reassessment as the absolute discretion of the Training Provider. Any further training or coaching over and above that provided on the course may be charged for.
- 6.4 To be eligible to attend any Requalification courses, students must present a valid in date certificate
- 6.5 The Customer acknowledges that if a Student arrives late for a course or is absent from any session, the Training Provider reserves the right to refuse to accept the Student for training, if it decides in its sole discretion that the student will gain insufficient knowledge or skill in the time remaining. In all such cases, the full course fee remains payable. To conform with awarding body requirements for statutory certificates, attendance at all sessions is mandatory.

7. PRICE AND PAYMENT

- 7.1 Unless otherwise agreed by the Training Provider in writing, the price for the Services shall be the price agreed, in writing, between the Customer and the Training Provider prior to entering into a Contract.
- 7.2 Customers may be asked to make payment in advance for Services against the Training Providers pro-forma invoice or provide a suitable credit reference or such other proof of creditworthiness as the Training may require at its sole discretion before supply.
- 7.3 The price for the Services shall be exclusive of any VAT.
- 7.4 Payment of the price for the Services is due in pounds sterling within 14 days of the Services commencing.
- 7.5 Time for payment shall be of the essence.
- 7.6 No payment shall be deemed to have been received until the Training Provider has received cleared funds.
- 7.7 All payments payable to the Training Provider under the Contract shall become due immediately on its termination despite any other provision.
- 7.8 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Training Provider to the Customer.
- 7.9 If the Customer fails to pay the Training Provider any sum due pursuant to the Contract, the Customer shall be liable to pay interest to the Training Provider on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Lloyds TSB, accruing on a daily basis until payment is made, whether before or after any judgment. In addition, the Training Provider reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.10 All charges, expenses and losses incurred by the Training Provider in recovering any overdue payments will be charged to the Customer.

8. CANCELLATIONS & TRANSFERS

- 8.1 Where a contract with the Customer is concluded on a distance selling basis, the Consumer Protection (Distance Selling) Regulations 2000 will apply, including the general right to cancel.
- 8.2 Subject to 8.1, if a request is made by the Customer to amend or cancel the Services, the following fees may be applied:
- 8.3 In the case of a request for a transfer:
- 8.3.1 More than 4 weeks before commencement date: First transfer at no charge, subsequent transfer 25% of amount charged
 - 8.3.2 Between 2-4 weeks before Commencement date: 25% of amount charged
 - 8.3.3 Less than two weeks before Commencement date: 50% of amount charged
- 8.4 In the case of cancellations:
- 8.4.1 More than 4 weeks before commencement date: Full Refund
 - 8.4.2 Between 2-4 weeks before Commencement date: 50% of amount charged
 - 8.4.3 Between 1-2 weeks before Commencement date: 75% of amount charged
 - 8.4.4 Less than 1 week before commencement date: 100% of amount charged
- 8.5 In all cases, notice of cancellation or transfer requests must be confirmed in writing addressed to the contact details on the booking confirmation.

9. DISPUTES

- 9.1 In the event of a dispute concerning the Services the parties shall use their reasonable endeavours to resolve it as soon as practicable. If they fail to do so within 14 days, the parties shall try to agree on and implement a method of dispute resolution. If they fail to agree such method within 14 days, the parties confirm that the dispute will then become subject to the exclusive jurisdiction of the English courts.

10. LIMITATION OF LIABILITY

- 10.1 Whilst every effort is made by the Training Provider to give satisfaction to the Customer by ensuring reasonable standards of skill and expertise whilst performing the Services, the Training Provider is not liable for any loss, expense, damage or delay, however arising from the performance of the Services or subsequent reliance by the Customer on the content.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of the Training Provider:
- (a) for death or personal injury caused by the Training Provider's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Training Provider to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 10.4 Subject to condition 10.2 and condition 10.3:
- (a) the Training Provider's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - (b) the Training Provider shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. CONFIDENTIALITY

- 11.1 The Customer shall at all times keep confidential any Confidential Information and shall not use or disclose any such confidential information except: -
- 11.1.1 with the written consent of the Training Provider or the party that the information relates to;
 - 11.1.2 as may be required by law or by the rules of any recognised stock exchange, or governmental or other regulatory body, when the Customer concerned shall, if practicable, supply a copy of the

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- required disclosure to the Training Provider before it is disclosed and incorporate any amendments or additions reasonably required by the Training Provider;
 - 11.1.3 to any tax authority to the extent reasonably required for the purposes of the tax affairs of the Training Provider; and
 - 11.1.4 if the information comes within the public domain (otherwise than as a result of the breach of this clause).
- 11.2 Information is not Confidential Information if: -
 - 11.2.1 It is or becomes public knowledge other than as a direct or indirect result of the information being disclosed in breach of the Contract; or
 - 11.2.2 The Customer can establish to the reasonable satisfaction of the Training Provider that it found out the information from a source not connected with the Training Provider and that the source is not under any obligation of confidence in respect of the information; or
 - 11.2.3 The Customer can establish to the reasonable satisfaction of the Training Provider that the information was known to the Customer before the date of the Contract and that it was not under any obligation of confidence in respect of the information; or
 - 11.2.4 The Training Provider agrees in writing that it is not confidential.

12. DATA PROTECTION

- 12.1 Each party undertakes to comply at all times with the requirements of the Data Protection Act 1998.
- 12.2 In particular, but without limitation, each party shall:
 - (a.) only carry out processing of such data in accordance with the other's instructions
 - (b.) only disclose it to or allow access to it by those of its employees (or agents or sub-contractors) who are familiar with data protection requirements and whose use of such data relates to their job or function
 - (c.) assist the other with all subject access requests received from data subjects.
- 12.3 For the avoidance of doubt, neither party (or its agents or sub-contractors) shall acquire any rights in any of the other's personal data or sensitive personal data and shall only be entitled to process it in accordance with its contractual obligations. On termination of the contract each party (or its agents or sub-contractors) shall immediately cease to use the same and shall arrange for its safe return or destruction as shall be agreed with the other at the relevant time.
- 12.4 Each party agrees to indemnify the other against any actions, costs, liabilities, losses, damages and expenses which the other may suffer or incur as a result of any breach by the former of any of the undertakings given in this Clause 6.

13. INTELLECTUAL PROPERTY

- 13.1 Each party confirms that it owns, or has all necessary rights in the use of, all intellectual property in relation to the Services and each acknowledges that such intellectual property shall remain the property of, or the rights in the use of shall remain with, the originating party, unless otherwise agreed in writing between the authorised representatives of the Training Provider and the Customer.
- 13.2 Each party agrees to indemnify the other against any actions, costs, liabilities, losses, damages and expenses which the other may suffer or incur as a result of any claim by a third party in relation to ownership or use of any relevant intellectual property, provided by the other party.

14. FORCE MAJEURE

- 14.1 The Training Provider reserves the right to defer the date of performance or to cancel the Contract or reduce the volume of the Services ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to any circumstances beyond the reasonable control of the Training Provider including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, sickness, absenteeism of Workers, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of [120] days, the Customer shall be entitled to give notice in writing to the Training Provider to terminate the Contract.

15. GENERAL

- 15.1 Each right or remedy of the Training Provider under the Contract is without prejudice to any other right or remedy of the Training Provider whether under the Contract or not.

- 15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 15.3 Failure or delay by the Training Provider in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 15.4 Any waiver by the Training Provider of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 15.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

16. COMMUNICATIONS

- 16.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or by e-mail:
 - 16.1.1 (in case of communications to the Training Provider) to its registered office or such changed address as shall be notified to the Customer by the Training Provider; or
 - 16.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Training Provider by the Customer.
- 16.2 Communications shall be deemed to have been received:
 - 16.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - 16.2.2 if delivered by hand, on the day of delivery; or
 - 16.2.3 if sent by fax or e-mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 16.3 Communications addressed to the Training Provider shall be marked for the attention of The Director of Operations of New Directions Education Ltd.

I HAVE READ THE TERMS AND CONDITIONS AND ACCEPTED THEM

Signed..... Dated.....

Print Name.....

Customer Name.....

Address.....