

# Terms of Trade

## 1. Definitions

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In these conditions unless the context otherwise requires:

- Company means Training In Supply Limited (abbreviated as TIS).
- Buyer means the person or company buying the goods/products and/or services from TIS.
- Goods and/or services mean the goods, products and/or services being purchased by the Buyer from TIS.
- Contract means the contract between TIS and the Buyer for the purchase of the goods and/or services.
- Course means short sessions of training over one or more continuous days.
- Date of the contract means where the contract arises from a quotation given by TIS:
  - i) the date of acceptance of the order by TIS; or
  - ii) Where the contract arises from a quotation given by TIS, the date upon written notification of acceptance of the quotation is received by TIS.
- Contract price means the price of goods and/or services as agreed between the Buyer and TIS.
- Person includes a corporation, association, firm, company, partnership or individual.
- Programme means a series of training sessions delivered in durations of one day or less over several months (such as a programme to achieve a national certificate).
- Quotation shall mean price on offer for a fixed term.
- Manager is the Buyer's appointed person and authorised decision maker.

## 2. Quotation

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The Buyer may request a Quotation from TIS setting out the price and quantity of the goods and/or services to be supplied. If the Quotation is acceptable to the Buyer, the Buyer may place an order within an acceptable timeframe.

## 3. Acceptance

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If any instruction is received by TIS from the Buyer for the supply of goods and/or services, it shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer, the terms and conditions are definitive and binding.

## 4. Terms and Conditions

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These terms and conditions and any subsequent terms and conditions issued by TIS shall apply to all orders for the goods and/or services made by the Buyer after the date and time at which these conditions are first delivered or sent by email or facsimile to, or otherwise brought to the notice of, any employee, staff member or representative of the Buyer. It shall be the Buyer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Buyer, and accordingly any order made by the Buyer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions.

## 5. Price

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5.1. The Price shall be as indicated on invoices provided by TIS to the Buyer in respect of goods and/or services supplied; or

- 5.2. The Price shall be TIS' current Price at the date of delivery of any goods and/or services or that agreed to by the Buyer and TIS beforehand and confirmed in an exchange of email or in a formal Training Proposal.
- 5.3. Time for payment for the goods and/or services shall be of the essence and will be stated on the invoice, quotation, tender documents, work authorisation form or any other work commencement forms. If no time is stated then payment shall be due on delivery of any goods and/or services with payment terms being:
  - a. Individuals - prior to the start date of any training course or programme when confirming the individual's booking.
  - b. Employers - as stated in Clause 6.2 below.
- 5.4. The Buyer agrees that the cost Price shall be determined by TIS, and shall take into consideration any "one-off" costs such as design and production.
- 5.5. TIS reserve the right to implement a surcharge for alterations to specifications of goods and/or services after the order has been placed.

## **6. Payment, Late Payment, Default of Payment and Consequences of Default of Payment**

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- 6.1. The method of payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and TIS; the preferred method of payment being by bank direct credit.
- 6.2. Subject to any provision to the contrary in the Contract, payment (being bank direct credit unless otherwise arranged in advance and confirmed in writing by an appointed TIS person) is due in full **within seven (7) days** of the date of TIS' invoice to the Buyer, which shall be issued on delivery of the services (the start date of any training course or programme) or on delivery or despatch of the goods.
- 6.3. Late payment shall incur interest at the rate of 15% per month calculated on a daily basis. This shall be payable on any monies outstanding under the Contract from the date payment was due until the date payment is received by TIS, but without prejudice to TIS' other rights or remedies in respect of the Buyer's default in failing to make payment on the due date.
- 6.4. Without prejudice to any other remedies TIS may have, if at any time the Buyer is in breach of any obligation (including those relating to payment); TIS may suspend or terminate the supply of goods and/or services to the Buyer and any of its other obligations under the terms and conditions. TIS will not be liable to the Buyer for any loss or damage the Buyer suffers because TIS exercised its rights under this clause.
- 6.5. In the event that:
  - a. any money payable to TIS becomes overdue, or in TIS' opinion the Buyer will be unable to meet its payments as they fall due; or
  - b. the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - c. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then without prejudice to TIS' other remedies at law

then TIS shall be entitled to cancel all or any part of any order of the Buyer that remains unperformed in addition to, and without prejudice to any other remedies; and all amounts owing to TIS shall, whether or not due for payment, immediately become payable.

## 7. Copyright

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- 7.1. All Copyright and other Intellectual Property existing in all documents remains the property of the author Training In Supply Limited (trading as TIS) indefinitely, and are supplied by TIS to the Recipient for the Recipient's use only. Except as provided by the Copyright Act 1994, no part of any publication may be reproduced or stored in a retrieval system in any form or by any means without the prior written permission of the copyright owner, Training in Supply Limited.
- 7.2. Unauthorised copies of training manuals and/or Health and Safety Manuals are not supported by TIS, and will not offer any legal protection for the Buyer.
- 7.3. Unauthorised copies will not be kept current with legislative changes by TIS.
- 7.4. Authorised copies of training manuals and/or Health and Safety Manuals are produced in colour and may be individually numbered and recorded in a register maintained by TIS.
- 7.5. Where it has been agreed that a copy of any training manual and/or Health and Safety Manual will be provided in a digital (electronic) format then such copies will usually be secured to prevent unauthorised copying. Additional costs will usually apply to unsecured copies; such costs will likely be significant.

## 8. Training Courses - Withdrawals - Prior to Commencement

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- 8.1 Withdrawal from any course for any reason prior to the date of commencement may be made verbally but must be confirmed by email or letter.
  - Withdrawal advice by email or letter providing notice more than 14 days prior to the course commencement date - No charge.
  - Withdrawal advice by email or letter providing between 14 and seven days notice - an administrative fee of \$50 plus GST per trainee may apply.
  - Withdrawal advice by email or letter provided within seven days (7) of the course commencement date - an administrative fee of 10% of the fee per trainee or \$500 (whichever is the lesser) may apply.
  - Failure to attend a course with no prior advice - full price / no refund if prepaid.
- 8.2 Alternatively substitute trainees may be accepted up to the commencement of the course or programme. Alterations to booking dates or transfers to a different course cannot usually be made within fourteen (14) days of the course commencement date.
- 8.3 No refund will be made for any pre-course study material purchased by trainee(s).

## 9. Training Courses - Withdrawals - After Commencement

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- 9.1 Where a trainee withdraws from a training course after the course commencing the trainee will be invoiced for 50% of the course fees or \$500 whichever is the lesser amount. The trainee will also be invoiced for any used study or assessment material which cannot be reused (usually \$15-20 plus GST).
- 9.2 Where a trainee withdraws from a training programme after the programme commencing trainees are not entitled to any refund.
- 9.4 Where a trainee fails to complete a programme where external funding is provided as a "subsidy" to TIS by another party (such as an Industry Training Organisation) on completion/

achievement of unit standards by the trainee, the trainee or employer (as applicable) will be invoiced for an amount equal to the funding applying to all unit standards that were to be addressed during the programme.

- 9.5 In the event of any fee paid at commencement of the course by an employer, any refund will be made to the employer, not the trainee.
- 9.6 **Special Circumstances** - Where a trainee is having insurmountable difficulties with a training course and after being counselled wishes to be removed from the programme, up until the second day of the course, a refund of 50% of any fees paid will be made (except for any used study material or assessment schedules which cannot be reused and will therefore be charged for), or 50% of the fees will be invoiced to the trainee or employer.

## 10. Governing Laws

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These Terms of Trade will be interpreted in accordance with applicable government legislation, which will have exclusive legal jurisdiction over any dispute in relation to the goods and/or services or these Terms of Trade.

## 11. Dispute Resolution

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TIS will endeavour to resolve any dispute between the Buyer and itself without the need for Court proceedings. Any such attempt is without legal prejudice.

## 12. Reservation of Title

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Ownership and title of the goods remains with TIS until the purchased price and all other monies owing by the Buyer, under the contract or any other contract to TIS, have been paid in full.

## 13. Warranty

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TIS warrants that it will repair or make good any defects in the goods, if written notice of the claim is received by TIS within seven (7) days from the date the goods were delivered. No claim shall be accepted under such warranty if any attempt to repair the defective goods is made by any person not authorised by TIS, or if the defective goods have been modified or incorrectly stored, maintained or used. If TIS elects to repair or replace any defective goods, such work shall be undertaken at such place as TIS may reasonably specify and the Buyer shall be responsible at its cost and risk for shipment of the defective goods to the place specified.

## 14. Liability

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TIS shall not be liable for any loss of any kind whatsoever suffered by the Buyer as a result of any breach of any of TIS' obligations under the contract, including any cancellation of the contract or any negligence on the part of TIS, its servants, agents or contractors, nor shall TIS be liable for any loss, damage or injury caused to the Buyer's servants, agents, contractors, buyers, visitors, tenants, trespassers or other persons. The Buyer shall indemnify TIS against any claim by any such person.