

We, the Freight Transport Association Limited, are pleased to set out the terms applicable to any training course that we provide to you.

1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**).

Client: the person, firm or company who books a place on a Training Course for its Delegates.

Client Equipment: any equipment, systems, cabling, facilities, Documents, information or materials provided by the Client to the FTA to be used directly or indirectly in the supply of the Training Course.

Contract: the Client's purchase order and the FTA's acceptance of it, or the Client's acceptance of a quotation for a Training Course by the FTA under condition 2.2.

Course Fee: the fee for the Training Course as per the Training Prospectus or as set out in the Training Solutions Agreement.

Course Material: all Documents, information, data, software and materials provided to the Client or the Delegates by the FTA in relation to the Training Course.

Delegate: a person nominated by the Client to attend the Training Course as set out in the Training Solutions Agreement.

Document: includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Training Solutions Agreement (TSA): the Training Solutions Agreement or other proposal document provided to the Client by the FTA setting out the details of the Training Course.

FTA: Freight Transport Association Limited a company registered in England and Wales with company number 00391957 whose registered office is at Hermes House, St John's Road, Tunbridge Wells Kent TN24 9UZ.

FTA Trainer: the FTA authorised trainer appointed by the FTA and engaged in the provision of the Training Course.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Training Course: the Training Course to be provided to the Client by the FTA under the Contract as set out in the Training Solutions Agreement.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Headings in these conditions shall not affect their interpretation.

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Unless expressly stated otherwise, a reference to **writing** or **written** includes faxes and e-mail.
- 1.6 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.7 References to conditions are to the conditions of the Contract.

2 APPLICATION OF CONDITIONS

- 2.1 These Conditions shall apply to and be incorporated into the Contract and shall prevail over any inconsistent terms or conditions contained, or referred to, in the Client's purchase order; confirmation of order; acceptance of a quotation, or specification or other Document supplied by the Client, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Client's purchase order; or the Client's acceptance of a quotation for a Training Course by the FTA, constitutes an offer by the Client to purchase a place or places for its Delegates on the Training Course on these Conditions. No offer placed by the Client shall be accepted by the FTA other than:
- 2.2.1 by a written acknowledgement issued and executed by the FTA; or
- 2.2.2 (if earlier) by the FTA starting to provide the Training Course.
- 2.3 The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.
- 2.4 Quotations are given by the FTA on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that the FTA has not previously withdrawn it.
- 2.5 Public course fees are published in the FTA Training Prospectus and are subject to change by the FTA without prior notification.

3 PERFORMANCE OF THE TRAINING COURSE

- 3.1 Subject to the provisions of this condition 3, the FTA Trainer shall provide the Training Course to the Delegates on such date(s) and at such location(s) as are specified in the Training Solutions Agreement.
- 3.2 The FTA shall use reasonable endeavours to:
- 3.2.1 provide the Training Course in accordance with the Training Solutions Agreement;
- 3.2.2 accommodate any special requirements of a Delegate communicated to the FTA under condition 6.1.1 if the FTA considers that it is both reasonable and practical to do so and provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract; and

- 3.2.3 observe all health and safety rules and regulations, and any other reasonable security requirements that apply at
- 3.2.4 the Client's premises and that have been communicated to the FTA under condition 6.1.6, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 3.3 In the event that the FTA Trainer specified in the Training Solutions Agreement is unable to provide the Training Course on the date or at the location specified in the Training Solutions Agreement, the FTA shall use reasonable endeavours to provide a substitute FTA Trainer to provide the Training Course.
- 3.4 The FTA reserves the right to cancel the date for the Training Course and in this situation every effort will be made to reschedule the Training Course or to refund the Course Fees in full.

4 COURSE CONTENT

- 4.1 The FTA Trainer will endeavour to cover all the topics outlined in the Training Solutions Agreement, but the FTA accepts no liability for failure to cover all or any part thereof and reserves the right to vary the course contents at any time without reference or notification to the Client.
- 4.2 Neither the statement of objectives nor any other matter contained in the course information definition in the Training Solutions Agreement shall constitute a representation, condition or warranty by the FTA that the Delegates will achieve the objectives stated or otherwise achieve any particular level of knowledge or competence.
- 4.3 The Client acknowledges that opinions expressed by the FTA Trainer on the Training Course are those of the individual trainer and not necessarily those of the FTA.

5 CLIENT'S SUBSTITUTIONS AND CANCELLATIONS

- 5.1 **CPC courses**
For CPC courses, where notification is received in writing less than four weeks prior to the commencement of the course, fees cannot be refunded or transferred. Where notification is received in writing more than four weeks prior to the commencement of the course, the full fee will be refunded or the booking may be transferred to another course. Any study material already issued must be returned before a credit is raised. You may substitute one delegate for another without penalty until registration takes place with the OCR examination board.
- 5.2 **DGSA courses**
For DGSA training courses, where notification is received in writing less than four weeks prior to the commencement of the course, both the course fee and the examination registration fees will be payable in full. Due to the examination registration requirements for the Scottish Qualifications Authority transfers or substitutions for the examination will not be possible. Where notification is received in writing more than four weeks prior to the commencement of the course, the full fee will be refunded or the booking may be transferred to another course
- 5.3 **All other courses**
Where notification is received in writing more than four weeks prior to the commencement of the course, the full

fee will be refunded or the booking may be transferred to another course.

Where cancellation in writing is received less than four weeks but more than two weeks prior to the starting date of the course, fees cannot be refunded but can be transferred to another course and are subject to an administration fee of £50 plus VAT.

Where notice of cancellation is received less than two weeks prior to the commencement of the course, fees cannot be refunded or transferred. For FTA courses only, delegates may be substituted at any time without penalty other than CMI approved courses.

6 CLIENT'S OBLIGATIONS

- 6.1 The Client shall:
- 6.1.1 ensure that the FTA is notified in advance of any special requirements relating to the Delegates;
- 6.1.2 ensure that its Delegates have adequate competence, knowledge and skill to interpret and benefit from the Training Course;
- 6.1.3 co-operate with the FTA and the FTA Trainer in all matters relating to the Training Course;
- 6.1.4 provide the FTA, the FTA Trainer and the FTA's agents, subcontractors, and employees, in a timely manner and at no charge, with access to the Client's premises, data and other facilities as reasonably required;
- 6.1.5 provide to the FTA and the FTA Trainer, in a timely manner, such Client Equipment and other information as the FTA may reasonably require and ensure that it is accurate in all material respects;
- 6.1.6 inform the FTA and the FTA Trainer of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises; and
- 6.1.7 ensure that all Client Equipment is in good working order and suitable for the purposes for which it is used in relation to the Training Course and conforms to all relevant standards or requirements.
- 6.2 If the FTA's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the FTA shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 6.3 The Client shall be liable to pay to the FTA, on demand, all reasonable costs, charges or losses sustained or incurred by the FTA (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the FTA confirming such costs, charges and losses to the Client in writing.
- #### 7 NON-SOLICITATION
- 7.1 The Client shall not, without the prior written consent of the FTA, at any time from the date of the Contract to the expiry of six months after the last date of supply of the Training

Course, solicit or entice away from the FTA or employ (or attempt to employ) the FTA Trainer or any other person who is, or has been, engaged as an employee, consultant or subcontractor of the FTA directly or indirectly in the provision of the Training Course.

- 7.2 Any consent given by the FTA in accordance with condition 7.1 shall be subject to the Client paying to the FTA a sum equivalent to 20% of then current annual remuneration of the FTA Trainer or the FTA's employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Client to that FTA Trainer, employee, consultant or subcontractor.

8 CHARGES AND PAYMENT

- 8.1 In consideration of the provision of the Training Course by the FTA, the Client shall pay the Course Fee per Delegate or Course as set out in the Training Solutions Agreement.
- 8.2 The Course Fee includes all written materials, lunches and refreshments as set out in the Training Solutions Agreement and excludes VAT, which the FTA shall add to its invoices at the appropriate rate.
- 8.3 The Client shall be responsible for all travel arrangements, accommodation requirements and other costs incurred by its Delegates relating to attendance at the Training Course where this is non-residential, and the FTA shall have no responsibility for any such costs resulting from scheduling changes or cancellations to the Training Course by the FTA. Residential courses include full board accommodation and course/study materials where appropriate and the FTA shall have no responsibility for any costs resulting from scheduling changes or cancellations to residential Training Courses by the FTA.
- 8.4 The Client shall pay each invoice submitted to it by the FTA, in full and in cleared funds, within 30 days of the date of the invoice.
- 8.5 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the FTA on the due date, the FTA may:
- 8.5.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Client shall pay the interest immediately on demand. The FTA may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- 8.5.2 suspend all future Training Courses until payment has been made in full.
- 8.6 Time for payment shall be of the essence of the Contract.
- 8.7 The FTA may, without prejudice to any other rights it may have, set off any liability of the Client to the FTA against any liability of the FTA to the Client.

9 INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights and all other rights in the Course Material provided to the Client or the Delegates by the FTA or the FTA Trainer shall be owned by the FTA.
- 9.2 The FTA hereby grants the Client and its Delegates a non-exclusive, non-transferable licence to use the Course Material to such extent as is necessary to enable the Client

and the Delegates to receive and to make reasonable use of the Training Course.

- 9.3 The Client shall not and the Delegates shall not:
- 9.3.1 reproduce, copy or translate in whole or in part the Course Materials without the prior written consent of the FTA; or
- 9.3.2 delete, amend, alter or deface any confidentiality or proprietary notices on the Course Materials.

10 WARRANTIES AND LIABILITY

- 10.1 The FTA will use reasonable endeavours to ensure that the Training Course is provided with reasonable skill and care and in accordance with practices consistent with the professional standards in the industry.
- 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 limits or excludes the liability of the FTA:
- 10.3.1 for death or personal injury resulting from negligence; or
- 10.3.2 for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the FTA.
- 10.4 Subject to condition 10.2 and condition 10.3:
- 10.4.1 the FTA shall not be liable for loss of profits; or loss of business; or depletion of goodwill and/or similar losses; or loss of anticipated savings; or loss of goods; or loss of contract; or loss of use; or loss or corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- 10.4.2 the FTA'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 150% of the Course Fees.

11 DATA PROTECTION

The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency, and personal data of the Client and its Delegates will be processed by and on behalf of the FTA in connection with the Training Course.

12 FORCE MAJEURE

The FTA shall have no liability to the Client under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the FTA or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

13 GENERAL**13.1 Variation**

Subject to condition 4, no variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

13.2 Waiver

13.2.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. 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 preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

13.2.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

13.3 Severance

13.3.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

13.3.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.4 Entire agreement

13.4.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

13.4.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).

13.4.3 Nothing in this condition shall limit or exclude any liability for fraud.

13.5 Assignment

13.5.1 The Client shall not, without the prior written consent of the FTA, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.5.2 The FTA may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

13.5.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

13.6 No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for or to bind, the other party in any way.

13.7 Rights of third parties

A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.8 Notices

13.8.1 Notices required to be given under the Contract shall be given in writing using the English language.

13.8.2 Notices to the FTA shall be addressed to the Chief Executive, Freight Transport Association Limited, Hermes House, St John's Road, Tunbridge Wells Kent TN4 9UZ or to such other person or address as specified to the Client by the FTA in writing.

13.8.3 Notices to the Client shall be delivered to the name and address as specified in the Training Solutions Agreement or to such other person or address as specified to the FTA to the Client in writing

13.8.4 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

13.8.5 This condition 13.8 shall not apply to the service of any proceedings or other documents in any legal action.

13.9 Governing law and jurisdiction

13.9.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

13.9.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.