

NCASS TRAINING TERMS AND CONDITIONS FOR BUSINESSES

Please note these terms and conditions apply if you are a business. Separate terms apply (which are available <http://www.ncass.org.uk/consumer-terms>) if you are a consumer. You are a consumer if:

- You are an individual.
- You are buying products from us wholly or mainly for your personal use (not for use in connection with your trade, business, craft or profession).

AGREED TERMS

Your attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

1. ABOUT US

- 1.1 **Company details.** Trade Management Services Ltd trading as NCASS (The Nationwide Caterers Association) (company number **05346529**) (**we** and **us**) is a company registered in England and Wales and our registered office is at Britannia Suite Lakeside Business Centre, Lifford Lane, Kings Norton, Birmingham, West Midlands, B30 3NU. Our VAT number is 857764471. We operate the website www.ncasstraining.co.uk.
- 1.2 **Contacting us.** To contact us, telephone our customer service team at 0300 124 6866 or email us at info@ncasstraining.co.uk. How to give us formal notice of any matter under the Contract is set out in clause 13.2.

2. OUR CONTRACT WITH YOU

- 2.1 **Our contract.** These terms and conditions (**Terms**) apply to the order by you and supply of Services by us to you (**Contract**). They apply to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 **Entire agreement.** The Contract is the entire agreement between you and us in relation to its subject matter. You acknowledge that you have not relied on any statement, promise or representation or assurance or warranty that is not set out in the Contract.

- 2.3 **Your copy.** You should print off a copy of these Terms or save them to your computer for future reference.

3. PLACING AN ORDER AND ITS ACCEPTANCE

- 3.1 **Placing your order.** Please follow the onscreen prompts to place your order. You may only submit an order using the method set out on the website. Each order is an offer by you to buy the training services specified in the order (**Services**) subject to these Terms.
- 3.2 **Correcting input errors.** Our order process allows you to check and amend any errors before submitting your order to us. Please check the order carefully before confirming it. You are responsible for ensuring that your order is complete and accurate.
- 3.3 **Accepting your order.** Our acceptance of your order takes place on the earlier of when you pay us for the Services and when we send an email to you to accept it, at which point and on which date (**Commencement Date**) the Contract between you and us will come into existence.

4. OUR SERVICES

- 4.1 **Descriptions.** Any descriptions on our site are published for the sole purpose of giving an approximate idea of the services described in them. They will not form part of the Contract or have any contractual force.
- 4.2 **Compliance with specification.** Subject to our right to amend the specification (see clause 4.3) we will supply the Services to you in accordance with the specification for the Services appearing on our website at the date of your order in all material respects.
- 4.3 **Changes to specification.** We reserve the right to amend the specification of the Services if required by any applicable statutory or regulatory requirement or if the amendment will not materially affect the nature or quality of the Services.
- 4.4 **Reasonable care and skill.** We warrant to you that the Services will be provided using reasonable care and skill.
- 4.5 **Time for performance.** We will use all reasonable endeavours to meet any performance dates specified in the Order Confirmation, but any such dates are estimates only and failure to perform the Services by such dates will not give you the right to terminate the Contract.
- 4.6 **Single User.** Unless otherwise specified by us in the description of the Services or in the Order Confirmation, the Services and any materials provided in connection with them, are for a single user only.

5. YOUR OBLIGATIONS

- 5.1 It is your responsibility to ensure that:
- (a) the terms of your order are complete and accurate; and
 - (b) you cooperate with us in all matters relating to the Services.
- 5.2 If our ability to perform the Services is prevented or delayed by any failure by you to fulfil any obligation listed in clause 5.1 (**Your Default**):
- (a) we will be entitled to suspend performance of the Services until you remedy Your Default, and to rely on Your Default to relieve us from the performance of the Services, in each case to the extent Your Default prevents or delays performance of the Services. In certain circumstances Your Default may entitle us to terminate the Contract under clause 11 (Termination);
 - (b) we will not be responsible for any costs or losses you sustain or incur arising directly or indirectly from our failure or delay to perform the Services; and
 - (c) it will be your responsibility to reimburse us on written demand for any costs or losses we sustain or incur arising directly or indirectly from Your Default.

6. CHARGES

- 6.1 Except where clause 6.6 applies, in consideration of us providing the Services you must pay our charges (**Charges**) in accordance with this clause 6.
- 6.2 The Charges are the prices quoted on our site at the time you submit your order.
- 6.3 We take all reasonable care to ensure that the prices stated for the Services are correct at the time when the relevant information was entered into the system. However, please see clause 6.5 for what happens if we discover an error in the price of the Services you ordered.
- 6.4 Our Charges are exclusive of VAT. Where VAT is payable in respect of some or all of the Services you must pay us such additional amounts in respect of VAT, at the applicable rate, at the same time as you pay the Charges.
- 6.5 It is always possible that, despite our reasonable efforts, some of the Services on our site may be incorrectly priced. Where the correct price for the Services is less than the price stated on our site, we will charge the lower amount (or provide you with the proportionate refund if we have already taken payment from you). If the correct price for the Services is higher than the price stated on our site, we will contact you as soon as possible to inform you of this error and we will give you the option of continuing to purchase the Services at the correct price or cancelling your order (and refunding any sums you have paid).

6.6 If you have current NCASS membership, then some Services may be offered at a discounted rate. You should check the details of your membership for what Services are and are not discounted.

7. HOW TO PAY

7.1 Payment for the Services is in advance. We will take your payment upon you placing your order.

7.2 You can pay for the Services by card or via SOTpay.

7.3 If you do not pay us for the Services when you are supposed to (see clause 11.4) and you still do not make payment within 5 days of us reminding you that payment is due, we may suspend supply of the Services until you have paid us the outstanding amounts.

7.4 You shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All intellectual property rights in or arising out of or in connection with the Services will be owned by us or our licensors. The intellectual property rights in any training materials or other documentation we provide to you in connection with the Services (**Our Materials**) will be owned by us or our licensors.

8.2 We agree to grant you a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable single user licence to use Our Materials for the purpose of receiving and using the Services and such deliverables in your business. You may not sub-license, assign or otherwise transfer the rights granted in this clause 8.2.

8.3 You agree not to:

- (a) copy Our Materials except where such copying is incidental or necessary for the purposes of or in connection with the Services;
- (b) rent, lease, sub-license, loan, translate or merge the whole or any part of Our Materials;
- (c) alter, adapt, vary or modify, the whole or any part of Our Materials;
- (d) permit or allow Our Materials or any part of them to be combined with, or become incorporated into, any other materials;
- (e) provide or otherwise make available Our Materials in whole or in part, in any form to any person other than you.

9. HOW WE MAY USE YOUR PERSONAL INFORMATION

- 9.1 We will use any personal information you provide to us to:
- (a) provide the Services;
 - (b) process your payment for the Services
 - (c) inform you about similar services that we provide, but you may stop receiving these at any time by contacting us.
- 9.2 We will process your personal information in accordance with our privacy policy, a copy of which is available. ncass.org.uk/ncass-privacy-policy

10. LIMITATION OF LIABILITY: YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 10.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.2 Subject to clause 10.1, we will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of use or corruption of software, data or information; and
 - (e) any indirect or consequential loss.
- 10.3 Subject to clause 10.1, our total liability to you arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to the higher of 100% of the total Charges paid under the Contract or £200.
- 10.4 We have given commitments as to compliance of the Services with the relevant specification in clause 4.2. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

- 10.5 Nothing in these Terms limits or affects the exclusions and limitations set out in our website terms of use, a copy of which are available: ncass.org.uk/terms-of-use
- 10.6 This clause 10 will survive termination of the Contract.

11. TERMINATION, CONSEQUENCES OF TERMINATION AND SURVIVAL

11.1 **Termination.** Without limiting any of our other rights, we may suspend the performance of the Services, or terminate the Contract with immediate effect by giving written notice to you if:

- (a) you commit a material breach of any term of the Contract and (if such a breach is remediable) fail to remedy that breach within 5 days of you being notified in writing to do so;
- (b) you fail to pay any amount due under the Contract on the due date for payment;
- (c) you are the subject of a bankruptcy petition, application or order;
- (d) you take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your 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;
- (e) you suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business; or
- (f) your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.

11.2 **Consequences of termination.**

- (a) On termination of the Contract you must return all of Our Materials and any deliverables specified in your order which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them.
- (b) Termination of the Contract will not affect your or our rights and remedies that have accrued as at termination.

11.3 **Survival.** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination will remain in full force and effect.

12. EVENTS OUTSIDE OUR CONTROL

- 12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond our reasonable control (**Event Outside Our Control**).
- 12.2 If an Event Outside Our Control takes place that affects the performance of our obligations under the Contract:
- (a) we will contact you as soon as reasonably possible to notify you; and
 - (b) our obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. We will arrange a new date for performance of the Services with you after the Event Outside Our Control is over.
- 12.3 You may cancel the Contract affected by an Event Outside Our Control which has continued for more than 30 days. To cancel please contact us. If you opt to cancel we will refund the price you have paid, less the charges reasonably and actually incurred us by in performing the Services up to the date of the occurrence of the Event Outside Our Control.

13. COMMUNICATIONS BETWEEN US

- 13.1 When we refer to "in writing" in these Terms, this includes email.
- 13.2 Any notice or other communication given by one of us to the other under or in connection with the Contract must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.
- 13.3 A notice or other communication is deemed to have been received:
- (a) if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
 - (c) if sent by email, at 9.00 am the next working day after transmission.
- 13.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.
- 13.5 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

14. GENERAL

14.1 Assignment and transfer

- (a) We may assign or transfer our rights and obligations under the Contract to another entity.
- (b) You may only assign or transfer your rights or your obligations under the Contract to another person if we agree in writing.

14.2 **Variation.** Any variation of the Contract only has effect if it is in writing and signed by you and us (or our respective authorised representatives).

14.3 **Waiver.** If we do not insist that you perform any of your obligations under the Contract, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you or that you do not have to comply with those obligations. If we do waive any rights, we will only do so in writing, and that will not mean that we will automatically waive any right related to any later default by you.

14.4 **Severance.** Each paragraph of these Terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

14.5 **Third party rights.** The Contract is between you and us. No other person has any rights to enforce any of its terms.

14.6 **Governing law and jurisdiction.** The Contract is governed by English law and we each irrevocably agree to submit all disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English courts.