



MAKING
LEARNING
WORK

TERMS AND CONDITIONS

For the Purchase of Commercial
Training Courses

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TERMS AND CONDITIONS - FOR THE PURCHASE OF TRAINING COURSES

1. DEFINITIONS

1.1 In these Terms, unless the context otherwise requires, the following words shall have the following meanings:

'Agreement' means:

- these Terms;
 - the Quote Proposal; and
 - the Booking Form.
- Order Confirmation

'Booking Process' means the booking is submitted by the customer setting out the details of the supply of the Services by the Service Provider;

'Commencement Date' means the date on which the Service Provider commences the provision of the Services as more fully set out in the Quote Proposal and/or booking confirmation;

'Client' means any person, business or partnership who makes the Order and as more particularly described in the Booking Process;

Data Protection Legislation means the Data Protection Act 2018 and the UK GDPR;

'Delegates' means any person, business or partnership to whom the Service Provider delivers the Services and as more particularly described in the Booking Process;

'Force Majeure Event' means any act or event beyond the Service Provider's reasonable control including, without limitation, strikes, lock-outs, trade union action or any other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications

networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

'Freedom of Information Legislation' means the Freedom of Information (Scotland) Act 2002, the Freedom of Information Act 2000, the Environmental Information Regulations 2004, and the Environmental Information (Scotland) Regulations 2004 and any amendment thereto;

'UK GDPR' means the UK General Data Protection Regulation (as defined in section 3(10) (as supplemented by section 205(4) of the Data Protection Act 2018);

'Intellectual Property' means all intellectual property, including patents, utility models, trade and service marks, trade names, domain names, rights in designs, copyrights, moral rights, topography rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or registerable and including registrations and applications for registration of any of these and rights to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world;

'Materials' means any materials, including online resources, training manuals, handouts, books or any other materials associated with the provision of the Services (including equipment and tools, drawings, specifications and data);

'Order' means an order for the purchase of Services which the Client submits to the Service Provider by completing the booking process;

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'Quote Proposal' means the document provided to the Client by the Service Provider which provides a quote for the Services;

'Service Provider' means Forth Valley College of Further and Higher Education, with Registered Charity Number SC021191, having its registered office at Grangemouth Road, Falkirk FK2 9AD;

'Service Provider's Information' means any information disclosed to the Client or the Delegates by the Service Provider or which the Client of the Delegates otherwise becomes aware, directly or indirectly, as a result of or during the course of the provision of the Services to the Client and/or the Delegates, including but not limited to, any of the Service Provider's Intellectual Property of a confidential nature and any information regarding the Service Provider's business or clients;

'Services' means the training courses to be provided by the Service Provider to Delegates, on behalf of the Client, and as more fully described in the Quote Proposal and/or booking confirmation;

'Terms' means these terms and conditions;

'Termination Date' means the date on which the Service Provider ceases to provide the Services as more fully described in the Quote Proposal and/or booking confirmation, or such earlier date on which the Agreement shall terminate in accordance with the provisions of the Agreement;

'Total Cost' means the total cost of the Services (which is quoted exclusive of Value Added Tax or other indirect taxes or duties; and expenses or incidental costs) as fully described in the Quote Proposal and/or order confirmation.

- 1.2 The headings contained herein are for convenience only and shall not be construed as forming part of the Agreement or be taken into account in the interpretation hereof.
- 1.3 Reference to any section of, or part of, or schedule to, any Act of Parliament shall include any re-enactment or modification thereof.
- 1.4 The singular includes the plural and vice versa and any gender includes all genders.

2. AGREEMENT

- 2.1 The Agreement which is made up of the following documents:
 - 2.1.1 these Terms;
 - 2.1.2 the Quote Proposal; and
 - 2.1.3 the Booking Process.
 - 2.1.4 Order Confirmation
- 2.2 If there is any conflict or ambiguity between the terms of the documents listed above, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.
- 2.3 The Agreement constitutes the entire agreement between the parties in relation to the provision of the Services and supersedes and extinguishes all (if any) prior drafts, agreements, understandings, undertakings, representations, warranties and/or arrangements of any nature whatsoever (whether or not in writing) between the parties hereto in connection therewith.

3. SERVICES

- 3.1 In exchange for any Fee, the Client shall engage the Service Provider to provide the Services as set out in the Quote Proposal and/or order confirmation from the Commencement Date until the Termination Date.
- 3.2 The Client accepts and hereby agrees that the Service Provider shall be and is entitled to seek, apply for and accept contracts to supply services to third parties during the term of the Agreement and the arrangements herein are provided on a non-exclusive basis.
- 3.3 Please note the Service Provider reserves the right to alter the contents or delivery of the Services at its sole discretion.

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4. PAYMENT OF FEE(S)

- 4.1 The Fees shall be invoiced fully upon receiving the order confirmation.
- 4.2 All invoices will be due for payment within thirty (30) days of the date of the invoice unless otherwise agreed in writing by the Service Provider. Any failure to make payment within thirty (30) days shall entitle the Service Provider to terminate the Agreement without liability.
- 4.3 If any amount payable is not received by the due date thereon, without prejudice to any other rights and remedies of the Service Provider, the Service Provider shall be entitled to:
 - 4.3.1 charge interest to the Client on any portion of the Fees not paid at the rate of 4% per annum above the base rate of the Royal Bank of Scotland PLC as applying from time to time to run from the due date for payment until receipt by the Service Provider of the full amount whether or not after judgement and without prejudice to any other right or remedy of the Service Provider;
 - 4.3.2 refuse to make any supply of the Services to the Client and the Delegates whilst payment remains outstanding; and/or
 - 4.3.3 terminate the Agreement.
- 4.4 If the Client requires the Service Provider to carry out any services in addition to or beyond the scope of the Services, the remuneration for those services shall be agreed between the Client and the Service Provider in writing.
- 4.5 We will do what we reasonably can to ensure that the prices stated on the Website, our Quote Proposal and / or in our other marketing materials are accurate and up to date. In the unlikely event of any pricing errors, we will notify you by email and give you the opportunity to re-confirm your order at the correct price.

5. DUTIES OF THE CLIENT

- 5.1 The Client shall provide the Service Provider with such information and/or facilities that the Service Provider may require to undertake the Services. The Service Provider shall accept no liability whatsoever for the failure to deliver the Services as a result of any failure on the part of the Client to observe any terms of the Agreement.
- 5.2 The Client shall co-operate, to ensure that Delegate(s) provide all required information to the Service Provider. The service provider may withdraw the delegate(s) from the Services if the Delegate(s) does not co-operate with the Service Provider as detailed in this clause 5.2.
- 5.3 The Client shall procure that the Delegate(s) attend the Services.
- 5.4 If the Client fails to comply with clause 5.3 and/or if, Delegate(s) are withdrawn from the Services in accordance with clause 5.2, the Service Provider shall be entitled to recover costs in line with our cancellation policy - see section 11:
- 5.5 **Pre Course Delivery**
Enrolment forms must be completed and submitted at least 5 working days prior to course delivery and only candidates with a submitted enrolment form should attend the agreed course. My profile on the customer portal must be completed in advance of the course, only delegates with a completed profile should attend the agreed course. Any delegate who has not completed the customer portal should not attend however full fee will still apply.

5.6 FVC Course Delivery

Your maximum cohort size will be shown in your application regarding on campus Covid-19 safety measures can be found at: <https://www.forthvalley.ac.uk/about-us/campus-reopening/>

5.7 Virtual Training Delivery suitable equipment relevant to course

Where it has been agreed, training will be delivered via Video Conferencing software such as Zoom or Microsoft Teams. All delegates are required to have access to suitable IT equipment that is relevant to the course and must have a front facing web camera, sound and good internet connectivity. This should be tested in advance of the training by all delegates and they should familiarise themselves with the agreed virtual training platform.

Candidates should have a comfortable and ergonomic seating arrangement in a room with minimal background noise.

Minimum requirements for MS teams can be found here: <https://docs.microsoft.com/en-us/microsoftteams/hardware-requirements-for-the-teams-app>

Minimum requirements for Zoom can be found here: <https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux>

- 5.8 Where FVC sends training materials to the candidate(s) and the training is subsequently cancelled by the client, as per the cancellation policy, FVC will invoice accordingly.

5.9 Client Premises Delivery

Where the preference for delivery is at the clients premises FVC requires clients to complete an FVC off-site training checklist and provide the relevant documentary evidence.

Cohort sizes will be agreed in advance of the training and on the understanding that the designated training room will meet Scottish Government guidelines in relation to physical distancing.

When the trainer arrives on site they will be asked to complete a Risk Assessment Checklist of the training room.

If the room does not meet requirements we may need to reduce capacity or withdraw the training.

Where training is withdrawn 100% charge of any Fee relating to the specific course will be made.

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6. DATA PROTECTION

6.1 General Terms.

- 6.2 The parties each acknowledge that the GDPR shall enter into force on 25 May 2018. If, during the term of the Agreement, the GDPR shall enter into force, the parties hereby undertake to discuss and agree in good faith any procedures, processes and/or additional agreements required to be put into place to ensure that the personal data is processed and shared in accordance with the standards and laws to which the parties are each subjected and the parties shall make such amendments to the Agreement as is necessary.
- 6.3 If, during the term of the Agreement, the United Kingdom ceases to be a Member State of the European Union, the parties hereby undertake to discuss and agree in good faith what procedures, processes and/or additional agreements required to be put into place to ensure that the personal data is processed and shared in accordance with the standards and laws to which the Parties are each subjected and the parties shall make such amendments to the Agreement as is necessary.
- 6.4 Any questions, comments and requests regarding treatment of personal data by the Service Provider can be submitted to: dataprotection@forthvalley.ac.uk
- 6.5 If the Client or the Delegate(s) are unhappy with how the Service Provider treat his/her personal information he/she can contact: dataprotection@forthvalley.ac.uk and/or notify the Information Commissioner's Office (ICO) by calling their helpline on: 0303 123 1113.
- 6.6 The Service Provider will not store personal information longer than necessary for the purposes for which it is obtained, unless it is required to do so to comply with the law and/or any regulatory requirements.
- 6.7 The Service Provider will not transfer the personal data outwith the European Economic Area without informing the individual beforehand.
- 6.8 Data subjects have certain rights under the Data Protection Legislation which can be exercised by contacting: dataprotection@forthvalley.ac.uk including:
- 6.8.1 the right to access the personal data held about the data subject by making a subject access request in accordance with the Data Protection Legislation. After 25 May 2018 the Service Provider may charge a reasonable fee when a request is manifestly unfounded or excessive;
- 6.8.2 the right to have his/her personal data rectified if it is inaccurate or incomplete;
- 6.8.3 the right to have his/her personal data deleted in certain specific circumstances as set out in the Data Protection Legislation;
- 6.8.4 the right to restrict the processing of his/her personal data in certain specific circumstances as set out in the Data Protection Legislation;
- 6.8.5 the right to ask the Service Provider not to process his/her personal data for marketing purposes; and
- 6.8.6 where the data subject has provided consent, to withdraw such consent at any time.

- 6.9 Client's personal data.
- 6.10 Where the Service Provider processes the Customer's personal data, it is the data controller for the purposes of the Data Protection Legislation.
- 6.11 The Service Provider will collect the following personal data in relation to the Customer:
 - 6.11.1 personal data about the Customer that the Service Provider collects from the Customer or that the Customer provides during the application process. This includes information that the Customer provides by filling in the application form and booking form; or by corresponding with the Service Provider by phone, e-mail, post or otherwise; and
 - 6.11.2 personal data about the Customer that the Service Provider collects from the Customer or that Customer provides when the Service Provider provides the Services. This includes, information provided by corresponding with us by phone, e-mail, post or otherwise.
- 6.12 The Service Provider will use the Customer's personal details to process the Order; and to contact the Customer in relation to the Order and/or the Services.
- 6.13 The Service Provider will hold and process the Customer's personal data on the legal basis that it is necessary for the performance of the Agreement. Accordingly, without the Customer's personal data the Agreement cannot proceed.
- 6.14 The Service Provider will share the Customer's personal data with the Scottish Funding Council; the Scottish Government; and with other third parties where required to do so in order to comply with legal and regulatory obligations.
- 6.15 Delegates' personal data. The parties agree that they are data controllers in common in relation to the Delegates' personal data; and will treat the same in accordance with [the Data Sharing Agreement].

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7. CONFIDENTIALITY

- 7.1 The Client shall use all reasonable endeavours to ensure that it, the Delegates, and all of the Client's employees, agents and other representatives at all times keep in strict confidence all of the Service Provider's Information and must not use or disclose the same for any purpose whatsoever.
- 7.2 The Client shall not, and shall procure that the Delegates shall not, directly or indirectly divulge or communicate any information that might be confidential to the Service Provider (other than those whose province it is to know the same, or with the prior written authority of the Service Provider), nor shall they make use of any trade secrets, copyright protected materials, designs, design improvements, know-how, business information, methods, lists or other confidential information of the Service Provider or of their respective customers which they may (whether heretofore or hereafter) have received or obtained during the period of the Agreement. This restriction shall continue to apply after the termination of the Agreement but shall cease to apply in respect of any information which comes into the public domain otherwise than as a result of a breach of this restriction by the Client or the Delegates.
- 7.3 The Client shall ensure that all of the Delegates, and the Client's employees, agents and other representatives who receive any information to which these confidentiality provisions apply are aware of the confidentiality obligations set out in this clause 7.
- 7.4 The Client shall not, and shall procure that the Delegates shall not, use any of the Service Provider's Information for any purpose other than to perform its obligations under the Agreement.
- 7.5 The Client acknowledges and agrees that a breach of this clause 8 by the Client, the Delegates, and all of the Client's employees, agents or other representatives is likely to cause significant harm to the legitimate commercial interests of the Service Provider, and that damages alone will not be a sufficient remedy. Accordingly, the Service Provider shall be entitled to the remedy of injunction and/or interim injunction (or equivalent under any other law) in addition to the remedy of damages.
- 7.6 The Client acknowledges that the Service Provider is subject to the requirements of the Freedom of Information Legislation and may disclose any information (including Client information where the Service Provider holds it (as such term is defined under the Freedom of Information Legislation)) where required by Freedom of Information Legislation.
- 7.7 The Client shall assist and co-operate with the Service Provider to comply with any Freedom of Information Legislation and agrees to provide all necessary assistance as reasonably requested by the Service Provider in order that the Service Provider can respond to request made under the Freedom of Information Legislation promptly.
- 7.8 The Client agrees that the Service Provider shall be responsible for determining, at its absolute discretion, whether any commercially sensitive information and any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Legislation or is to be disclosed in response to a request which is subject to Freedom of Information Legislation.

8. INTELLECTUAL PROPERTY

- 8.1 All Materials, and all other materials, equipment and tools, drawings, specifications and data supplied by the Service Provider to the Client and/or the Delegates shall, at all times, be and remain the exclusive property of the Service Provider, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to the Service Provider. They shall not be disposed of or used other than in accordance with the Service Provider's written instructions or authorisation.
- 8.2 All ideas, methods, processes, inventions, discoveries, designs and other copyright work made or created by the Service Provider in providing the Services or relating to or capable of being used by the Client and/or the Delegates will remain in the ownership of the Service Provider unless otherwise stated in the Booking Form. All Intellectual Property used by the Service Provider in the performance of the Services shall be the exclusive property of the party owning it prior to the Commencement Date.
- 8.3 All Intellectual Property made or created by the Service Provider for the purpose of and/or in the provision of the Services, together with any modifications, enhancements or alterations thereto, shall vest and be owned absolutely by the Service Provider, unless otherwise agreed in writing with the Service Provider.

- 8.4 The Client hereby warrants and represents that any Intellectual Property it provides to the Service Provider for the purposes of the Service Provider providing the Services is either owned by the Client or appropriately licensed and its use by the Service Provider for the purposes of carrying out the Services will not infringe the Intellectual Property rights of any person. The Client shall indemnify and hold harmless the Service Provider from any and all loss, damage, liability, cost and expense against all claims in respect of a breach by the Client of this warranty.

9. SUBCONTRACTING AND ASSIGNATION

- 9.1 The Service Provider may assign the benefit and/or burden of the Agreement without the consent of the Client.
- 9.2 The Client acknowledges and agrees that the Service Provider may perform the Services through suitably qualified sub-contractors, the Service Provider remaining responsible for any act or omission of any such sub-contractor.

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10. LIABILITY

- 10.1

The entire financial liability of the Service Provider is as set out in this clause 11 (including any omissions of its employees, agents, Service Providers and sub-contractors) to the Client in respect of:
- 10.1.1

any breach of the Agreement;
- 10.1.2

any use made by the Client of the Services;
- 10.1.3

any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the Agreement.
- 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 Agreement.
- 10.3

Nothing in the Agreement excludes or limits the liability of the Service Provider for:
- 10.3.1

death or personal injury caused by negligence of the Service Provider's officers, employees, contractors or agents (acting in the course of their employment or agency); or
- 10.3.2

fraud or fraudulent misrepresentation.
- 10.4

Subject to clauses 10.2 and 10.3:
- 10.4.1

The Service Provider shall not be liable whether in contract, delict, breach of statutory duty or otherwise arising under or in connection with the Agreement for:
- (a)

loss of profit;
- (b)

loss of sales or business;
- (c)

loss or damage to goodwill; (iv) loss of anticipated savings; (v) loss of goods;
- (d)

loss of agreements or contracts;
- (e)

loss of use or corruption of software, data or information; and
- (f)

special, interdict, consequential or pure economic loss, costs, damages, charges or expenses.
- 10.4.2

The Service Provider's total liability in contract, delict (including negligence) or breach or statutory duty, misrepresentation, restitution or otherwise arising out of or in connection with the performance or contemplated performance of the Agreement shall be limited to the full fee.
- 10.5

The Service Provider shall have no liability for any failure of the Services caused by an act or omission of a third party supplier of the Service Provider or other party of whom the Service Provider is not responsible.
- 10.6

The Service Provider shall have no liability for loss, theft or damage to any items or equipment of the Client's as used as part of the Services.

11. CANCELLATION AND TERMINATION

- 11.1 Other than as set out in these Terms, the Agreement shall terminate on the Termination Date.
- 11.2 The Service Provider may cancel the Agreement (or any part of the Agreement) prior to the Termination Date for any reason and at any time, in which event the Service Provider will notify the Client. The Service Provider will also refund any Fees the Client has made in respect of the Services unless the Service Provider has cancelled the Agreement because of one or more of the following:
 - 11.2.1 the Client fails to pay any invoice when due;
 - 11.2.2 the Client breaches any term of the Agreement and fails to remedy same within 20 working days of being required to do so in writing (such notice expressly stating the Service Provider's intention to terminate);
 - 11.2.3 the Client has a receiver, administrative receiver, liquidator or provisional liquidator or trustee in bankruptcy appointed over all or any part of its assets;
 - 11.2.4 an event takes place which would entitle the appointment of a receiver or trustee in bankruptcy over the assets of the Client or which could cause any floating charge on its assets to crystallise;
 - 11.2.5 the Client has stopped payment of, or is unable to pay its debts or enters into an arrangement with its creditors or some action is taken to terminate its business; or
 - 11.2.6 the Client ceases for any reason to carry on business.
- 11.3 The Client may terminate the Agreement forthwith by giving notice to the Service Provider at any time in the event that the Service Provider breaches any material term of the Agreement and fails to remedy same within 20 working days of being required to do so in writing (such notice expressly stating the Client's intention to terminate).

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Cancellation Policy

- 11.4 In the event that the Client wants to cancel any part of the agreement, such cancellations, subject to below, may be given by phone on: 01324 403173, however must always be confirmed in writing to: Grangemouth Road, Falkirk FK2 9AD or by email to: training@forthvalley.ac.uk
- 11.5 Where the Client cancels the Services and/or the Agreement in whole:
- 11.5.1 the Client will be required to adhere to the following cancellation penalties

Notice Period	Penalty
15 or more working days' notice in advance of the commencement date	No penalty
14 - 11 days notice prior to the commencement date	50%
10 - 0 working days' plus non appearance on the morning of the commencement date	100%

Please note that each order confirmation is entitled to 1 free reschedule as long as 10 working days notice is provided. Any subsequent reschedule will be charged £10 administration charge per change.

- 11.5.2 the Client shall immediately pay to the Service Provider all of the Service Provider's outstanding unpaid invoices and interest; and
- 11.5.3 in respect of Services for which no invoice has yet been submitted, or for which an invoice was submitted but the Total Cost was not covered by the invoice, the Service Provider may submit an invoice for the Total Cost or such proportion thereof not yet invoiced for, which shall be payable immediately on receipt by the Client.

Refunds

Payment of Refunds. We will make any refunds using the same means of payment as you used for the initial transaction

12. GENERAL TERMS

- 12.1

Force Majeure Event. The Service Provider will not be responsible for any failure to perform, or delay in performance of, any of its obligations under the Agreement which are caused by a Force Majeure Event. If a Force Majeure Event takes place that affects the Agreement, the Service Provider will contact the Client as soon as reasonably possible to notify it. The Service Providers obligations under the Agreement will be suspended for the duration of the Force Majeure Event.
- 12.2

Severance. Each section of these Terms operates separately. If any of these sections is found by any court or relevant authority to be unlawful or unenforceable, the other sections shall not be affected and shall
- 12.3

remain in full force and effect. If any section of these Terms is found to be unlawful or unenforceable but would be lawful and enforceable if some part of the section were deleted, the section in question shall apply with such deletion as may be necessary to make it lawful and enforceable.

Waiver. No failure or delay by the Service Provider to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.

