

## **Terms and Conditions for the Supply of Training Services**

### **'The Balm First Aid Terms'**

During the continuance of the Agreement into which this document is incorporated (the 'Agreement'), The Balm First Aid or otherwise known as; 'TBFA' shall supply and the Purchaser shall purchase subject to these TBFA Terms. Definitions in the Agreement (which Agreement includes any schedule and/or any appendix thereto) shall also apply in these TBFA Terms. In the event of any conflict between these TBFA Terms and the terms of the Agreement, the terms of the Agreement shall take precedence.

#### **1. The Balm First Aid (TBFA), Specifications and related Prices**

The Services, the Specifications, and the related Prices are set out in the Agreement and/or its Schedules noted on the company's website (the 'Schedules') or Appendices (the 'Appendices').

#### **2. Orders**

**2.1.** No terms or conditions endorsed on a Purchaser's order, specification, or similar document will form part of the contract between the parties. By placing an order, the Purchaser acknowledges the applicability of The Balm First Aid Terms.

**2.2.** TBFA Supply and the Purchaser shall agree times and places, unless otherwise stated for the performance of Services which shall generally be set out in the relevant Schedule and/or Appendix. Otherwise, TBFA shall use its reasonable endeavours to perform them within a reasonable time in the circumstances.

**2.3.** Failure to notify of any delay shall not on its own entitle the Purchaser to terminate the contract or withhold payment against TBFA's invoice. Unless otherwise agreed in writing with TBFA, the Purchaser shall not be entitled to cancel any order for Services once the first performance of the Services has been performed by TBFA.

**2.4.** Purchasers may be asked to make payment in advance for Services against TBFA's pro-forma invoice or provide a suitable credit reference or such other proof of creditworthiness as TBFA may require at its sole discretion before supply.

#### **3. Eligibility for and Outcome of Training Courses**

**3.1.** It is the Purchaser's (individual/organisation's) responsibility to ensure that learner(s) 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. TBFA welcomes students with disabilities but it remains the learner(s) responsibility to ensure that they are appropriately supported in their workplace or one of our nominated external learning centres. TBFA should be provided in advance (and for setting up purposes) notification of any assistance that a learner is likely to need during the running of a course. If TBFA decides that a learner has not achieved the learning outcomes of the course and/or the assessment standard (i.e. they are referred), then they will subsequently be offered a free reassessment. Any further training or coaching over and above that provided on the course may be charged for.

**3.2.** To be eligible to attend an HSE two-day Requalification course, students must present a valid First aid at work certificate issued by an HSE-approved provider which is 'in date' on the last day of the Requalification course. 'In date' means the period within three months prior to the original certificate expiry date. The HSE allows a maximum of 28 days from the expiry date of the certificate to complete requalification training and assessment.

**3.3.** The Purchaser (the individual/organisation) acknowledges that if a learner arrives late for a course or is absent from any session, TBFA reserves the right to refuse to accept the learner for training, if it decides in its sole discretion that the learner will gain insufficient knowledge or skill in the time remaining. In all such cases, the full course fee remains payable. To conform with Health & Safety Executive (HSE) requirements for statutory certificates, attendance at all sessions is mandatory.

#### **4. Terms of Payment**

Unless, subject to separate agreed arrangements, the Purchaser shall pay TBFA within 21 days of the date of TBFA's invoice prior to the commencement of the nominated service. If the Purchaser fails to make payment on the due date, then the agreed date to deliver the service on will be postponed until the required payment is received. If full payment is not received on accounts within the predetermined period then TBFA shall be entitled to charge the Purchaser interest at the annual rate of 3% above the base rate of Santander plc. Unless otherwise agreed with TBFA or required by law, the Purchaser shall not be entitled to make any set off in respect of amounts due to TBFA.

## **5. Consumer Protection (Distance Selling) Regulations 2000 ('the Regulations')**

Where a contract with a consumer is concluded on a distance selling basis the Regulations (as amended from time to time) will apply and the Purchasing consumer will have a general right to cancel. In the case of services this will expire 14 days after booking (except for late bookings when it will expire on the date the services are commenced). **Subject to the Regulations and to the foregoing**, if a request is made to amend services or to cancel services, the following fees may be applied:

**5.1.** In the case of request for transfer:

(a.) More than four weeks before commencement date – First transfer at no charge subsequent transfer, 25% of amount charged

(b.) Between 2-4 weeks before Commencement date – 25% of amount charged

(c.) Less than two weeks before Commencement date – 50% of amount charged

**5.2.** In the case of cancellation:

(a.) More than four weeks before commencement date – Full Refund

(b.) Between 2-4 weeks before Commencement date – 50% of amount charged

(c.) Less than two weeks before Commencement date – 100% of amount charged

In all cases, notice of cancellation must be confirmed in writing addressed to the contact details on the booking confirmation letter.

## **6. Warranties**

**6.1.** TBFA warrants providing Services with all the care and skill to be expected of a qualified and competent contractor experienced in undertaking services of the same kind as the Services.

**6.2.** If the Services performed are in breach of Clause 9.1, TBFA will at its option make good the performance, re-perform the Service or refund the Purchaser the relevant Price, subject to availability and the performance being proved to be deficient to the reasonable satisfaction of TBFA. These obligations will not apply where:

**6.2.1.** 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

**6.2.2.** The Purchaser failed to notify TBFA of the defect within 14 days of the supply.

## **7. Notices**

Any demand, notice, or communication may be given by hand or sent by first class prepaid post or facsimile and shall be deemed to have been duly served if delivered by hand when left at the address of the other; if given or made by prepaid first class post, 48 hours after being posted (excluding Saturday, Sunday and public holidays); if given or made by facsimile, at the time of transmission, provided that a confirming copy is sent by first class prepaid post to the other party within 24 hours after transmission.

TBFA reserves the right to change the address of the learning centre by giving no less than 48 hours notices from the commencement date of the service being delivered. The new venue will be within a 10 mile radius of the original venue address. All additional expenses as a result of this will be borne by the learner/organisation and not TBFA.

Learner(s)/organisation will be notified of all changes to the venue address by Email, SMS and Telephone.

## **8. Force Majeure**

Neither party will be liable to the other for any failure or delay or for the consequences of any failure or delay in performance of this Agreement if it is due to any event beyond the reasonable control and contemplation of a party to this

Agreement including, without limitation, acts of God, war, industrial disputes, protests, fire, flood, storm, tempest, explosion, an act of terrorism and national emergencies.

## **9. Data Protection**

**9.1.** Each party undertakes to comply at all times with the Data Protection Act 1998 (the 'DPA') to the extent it processes any personal data or sensitive personal data on behalf of the other. 'personal data' and 'sensitive personal data' shall have the meanings given in the DPA.

**9.1.1.** 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 information requests received from data subjects.

**9.1.2.** 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.

**9.1.3.** 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.

## **10. Confidentiality**

Each party acknowledges and agrees that any and all information concerning the other's business or the terms of the Agreement including these TBFA Terms is confidential (hereinafter referred to as 'Confidential Information') and each party agrees that it shall not permit the duplication, use or disclosure of any such Confidential Information to any person (other than its own employee, agent or sub-contractor where the same requires such information for the performance of the Agreement) unless such duplication, use or disclosure is specifically authorised in writing by the other party, or is required by the operation of Law. Confidential Information does not include information, which at the time of disclosure is generally known by the public (other than by the unauthorised act of the disclosing party). The parties shall take all reasonable steps to ensure that their employees, agents and sub-contractors keep Confidential Information confidential.

## **11. Liability**

**11.1.** Nothing in this contract excludes or limits or attempts to exclude or limit the liability of either party for death or personal injury caused as a result of its negligence, or for fraudulent misrepresentation; or in respect of the implied warranties contained in the Supply of Goods and Services Act 1982.

**11.2.** Subject to Clause 11.1 TBFA will be under no liability to the Purchaser whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any damage or 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 like loss) howsoever caused.

**11.3.** Subject to Clauses 11.1 and 11.2, TBFA's aggregate liability under this Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any damage or 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 like loss) howsoever caused will be limited to the amount paid for the Services concerned.

## **12. Intellectual Property**

**12.1.** 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 SJA and the Purchaser.

**12.2.** 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.

### **13. Freedom of Information**

Where the Purchaser is a Public Authority as defined in the Freedom of Information Act 2000 ('the FOIA') it agrees to notify TBFA immediately if it receives any FOIA request for information regarding TBFA or its business, and it agrees to consult with TBFA regarding the application of any exemptions under the FOIA in relation to such request. TBFA agrees to cooperate with the Purchaser in relation to the FOIA.

### **14. Disputes**

In the event of a dispute concerning the Goods or 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.

### **15. Consequences of Termination**

The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination. The clauses which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

### **16. Contracts (Right of Third Parties) Act 1999**

The parties to the contract incorporating these conditions do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

### **17. Assignment**

Neither party shall be entitled to assign or transfer any of its rights or obligations without the prior written agreement of the other (which shall not be unreasonably withheld or delayed).

### **18. Waiver**

No failure or delay by a party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

### **19. Invalidity/Severability**

If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Agreement and will be ineffective without, as far as is possible, modifying any other clause or part of this Agreement and this will not affect any other provisions of this Agreement which will remain in full force and effect.

### **20. Variation**

This Agreement may only be varied or amended in writing and signed by the parties specifically referring to this clause and stating that this Agreement is varied in the manner specified.

### **21. Entire Agreement**

These terms and conditions, and the Agreement into which they are incorporated contain all the terms which the parties have agreed in relation to the subject matter of this Supply. Nothing in this Clause shall be taken to exclude liability for fraudulent misrepresentation.

### **22. No Partnership**

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.

### **23. Compliance with Laws and Regulations**

Each party shall observe and abide by and shall require its sub-contractors to observe and abide by all laws, regulations and by laws as may apply in relation to the matters contemplated by this Agreement.

### **24. Governing Law and Jurisdiction**

The formation, existence, construction, performance, validity and all aspects whatsoever of the Agreement or of any term of the Agreement will be governed by the law of England and Wales and subject to Clause 14, the courts of England and Wales shall have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Agreement.

### **25. Fair processing**

All information that we hold concerning you will be held and processed by TBFA strictly in accordance with the provisions of the Data Protection Act 1998.

Such data will be used by the organisation to administer our relationship with you as a customer on any of our services provided. We will not, without your consent, supply your name and addresses to any [other] third parties except where (1) such transfer is a necessary part of the activities that we undertake, or (2) we are required to do so by operation of law.

As an individual, you have a right under the Data Protection Act 1998 to obtain information from us, including a description of the data that we hold on you. Should you have any queries concerning this right, please contact our Data Protection Officer at [info@thebalm.co.uk](mailto:info@thebalm.co.uk)