



## Terms & Conditions

### 1. Definitions and interpretations

- Agreement:** means this document comprising of the clauses within it
- Booking Form:** means the form provided by KPHA for the Client to complete, which details the Client's order for service provision and the specification and prices of the services requested. A Booking Form only becomes agreed and accepted when confirmed in writing by KPHA
- Client:** means the individual, company, Local Authority, organisation or entity that is requesting the provision of KPHA services
- Course:** means a training course provided by KPHA on an in-house or open basis
- Delegate:** means an individual who attends a Course
- Force Majeure Event:** means any event outside the reasonable control of either party
- In writing:** means written communications including email
- KPHA:** means K.P. Hughes & Associates Ltd.
- IPR:** means all Intellectual Property Rights (IPR), pre-existing or developed in connection with the provision of services
- Price:** means the fee for the provision of services exclusive of VAT
- Qualification programme:** means a programme of Courses and/or learning interventions that facilitate a Delegate achieving a qualification
- Services:** means the services KPHA are providing as agreed on the Booking Form. This includes the allocation of pre-learning prior to a Course

### 2. General terms

- 2.1 This Agreement specifies the terms and conditions upon which KPHA provides Services to a Client unless otherwise agreed by KPHA in writing.
- 2.2 KPHA reserve the right to change these terms and conditions at any time to reflect changes in legislation or industry best practice. If such changes are detrimental to bookings approved and agreed by KPHA prior to the changes, the terms and conditions extant at the time of the booking will prevail unless KPHA is required to make such changes to comply with legislation or Awarding Body requirements, in which case a Client can choose to cancel their order in accordance with clause 7.5.
- 2.3 KPHA will only have entered into a contract with a Client once KPHA has agreed and accepted a booking for Services in writing.
- 2.4 The Client is responsible for ensuring only properly authorised persons within their organisation submit a Booking Form request for Services to KPHA. In each case a properly completed Booking Form requesting Service provision by a member of a Client's organisation is agreed by KPHA it will be deemed as a contract with the Client or Body Corporate.
- 2.5 The Client agrees to provide KPHA with written notice of any special requirements of Delegates a minimum of 10 working days in advance of the start of service provision, including pre-learning. Such special requirements include, but are not limited to, special dietary requirements, access and/or learning requirements, relevant risk assessments and health and safety issues or any other specific requirements that KPHA may reasonably be expected to accommodate. KPHA will use its reasonable endeavours to meet such requirements.
- 2.6 KPHA will provide Services to the Client as specified on the Booking Form and agreed by KPHA in writing.
- 2.7 KPHA is required to comply with the rules and policies set down by our Awarding Bodies and Ofqual in order to maintain our status as an Approved Centre. Consequently, KPHA will ensure compliance with the above rules and policies in the first instance when considering Client requests for alterations to service provision.
- 2.8 Where KPHA designs a Course or develops learning material of any description in order to provide a service to a Client, KPHA will retain copyright and all other intellectual property rights to all such material.
- 2.9 KPHA reserves the right to subcontract elements of or all of the Services provided as it sees fit.
- 2.10 If, in the sole opinion of KPHA, the behaviour, including standards of dress, of any Delegate whether attending a Course or in communications with KPHA could be considered as unreasonable, anti-social, unprofessional, discourteous or likely to cause a health and safety risk, KPHA reserve the right to immediately exclude that Delegate from any and all Courses and retain any payment made by the Client for the Course(s) or receive the full payment that would have been due had the exclusion not occurred.
- 2.11 The Client must provide Delegates with copies of the Course reference documents detailed in the joining instructions before, during and after the Course.

### 3. Pre-service provision

- 3.1 Any Prices quoted by KPHA in writing for Services will be valid for three months. At the expiry of this period the Agreement of said quoted Prices becomes invalid unless a booking has been confirmed in writing.
- 3.2 Where KPHA requires information from the Client in order for the agreed Services to be delivered, it shall be the responsibility of the Client to ensure the correct, accurate and complete information required is conveyed to KPHA on or before the date it is due. The information specification and due date will be notified to the Client in writing once the booking request is formally agreed by KPHA. If the Client does not provide KPHA with the above information on or before the date it is due KPHA reserve the right to make an additional charge for the extra work and disruption that this causes. KPHA will not be liable for any delay or non-delivery of service caused by a Client not providing the above information. KPHA reserve the right to suspend provision of agreed Services due to incorrect, inaccurate and/or incomplete information provided by the Client. In such circumstance a Client is not required to pay for



the suspended service but remains liable for payment of Services already provided regardless of whether the Client is in receipt of invoices or not for these Services at that time and any other reasonable expenses already incurred by KPHA.

#### **4. Service provision**

- 4.1 Unless otherwise agreed between the Client and KPHA, Services will be provided between the hours of 08:00 and 18:00 Monday to Friday on working days. This excludes bank holidays.
- 4.2 The Client is responsible for informing KPHA at least 10 days before the commencement of KPHA's delivery of service of any Delegate who has a disability that will affect their learning. In that 10 days KPHA will work with the Client to identify reasonable adjustments that can be implemented to support the Delegate.
- 4.3 Where formal assessments are part of KPHA's agreed service provision the Price agreed includes assessing and reporting on an initial assessment and one re-submission if the initial submission does not meet the required standard. The Price agreed on the Booking Form does not include further assessment, re-submissions, learning support, mentoring or Delegate development. However, further Services to support Delegates may be agreed through a separate Booking Form.
- 4.4 KPHA will use reasonable endeavours to deliver its service in the timescales as specified on the agreed Booking Form. However, KPHA will not be liable for events outside of its control (section 10).
- 4.5 Where the agreed booking includes provision of an in-house Course at a Client's premises the Client is responsible for providing the training facilities and resources specified on the Booking Form. KPHA will not be liable for any disruption or non-delivery of an in-house Course caused by the Client's facilities or equipment.
- 4.6 Some Courses provided by KPHA may include a requirement for Delegates to complete an element of pre-learning and/or pre-course assessment prior to attending a Course. Where the pre-learning and/or pre-course assessment is required this will be made clear in the joining instructions and a delivery date for this element of the Course will be provided.
- 4.7 Where completion of pre-learning and/or pre-course assessment is a pre-requisite to attending the Course, Delegates who in the reasonable opinion of KPHA have not completed the pre-learning and/or pre-course assessment will not be accepted on the Course. In such circumstances this will be treated as a cancellation and full cancellation fees will apply, including the Price of any accommodation and meals.

#### **5. Price and payment terms**

- 5.1 KPHA reserve the right to amend Prices for Services at any time but this will not affect Booking Forms that KPHA have formally agreed prior to the change.
- 5.2 The Price agreed on the Booking Form will include the resources, expenses, training materials in electronic form, meals and accommodation detailed on the Booking Form. All other costs remain the responsibility of the Client.
- 5.3 All Prices provided are in UK Pounds Sterling and are exclusive of Value Added Tax (VAT) which will be charged at the prevailing rate at the time KPHA invoices for Services provided.
- 5.4 Where a Client believes that they are exempt from paying VAT the responsibility to prove this with documentary evidence to KPHA's satisfaction remains with the Client. Until such time this evidence is provided and accepted by KPHA, non-payment of the VAT element of an invoice will be treated as failure to provide payment on or before the date it is due.
- 5.5 Invoices for Delegate places on open-courses are payable 30 calendar days before the commencement of Services, including pre-course learning where applicable or immediately if the Delegate place is booked less than 30 calendar days prior to the commencement of pre-learning or the Course. Bookings for Delegate places on open courses will not be formally agreed or accepted until full payment is received by KPHA.
- 5.6 Invoices for in-house courses will be raised and forwarded to the Client on the last day of each Course and are to be paid in full within 30 calendar days. Invoices for the first Course of a BTEC qualification will include any relevant Awarding Body Registration Fees.
- 5.7 Invoices for non-training Services will be raised on completion of the Services requested by a Client. Where Services are provided over an extended period KPHA reserve the right to invoice for Services provided on a monthly basis. In all cases invoices are to be paid in full within 30 calendar days.
- 5.8 KPHA reserve the right to decline to offer credit terms on our invoices and require payment in advance of providing Services.
- 5.9 KPHA reserve the right to cancel or suspend any current or future booking of service provision if payments are not received on or before the date on which it is due and/or a Client breaches the contract and fails to rectify such a breach in 10 working days from being notified by KPHA in writing. Such action does not diminish or negate KPHA's right to charge the Client a daily rate of interest on the overdue outstanding payments.
- 5.10 If a Client does not make payment on or before the date on which it is due KPHA reserve the right to charge the Client a daily rate of interest on the overdue amount at the rate of 6% per annum above the base rate of Metro Bank PLC. Interest shall be payable at this rate both before and after any judgment is made against a Client until the date on which payment in cleared funds is received in full, including all accrued interest.
- 5.11 Invoices are to be paid in full in UK Pounds Sterling to the bank account specified below:

Metro Bank PLC

Sort code        23-05-80

Account No.     25755839

Please quote the invoice as the Reference when making payment



## **6. Recognised Prior Learning (RPL)**

- 6.1 Invoices for RPL applications are payable before the commencement of the Services. Orders for RPL applications cannot be accepted or confirmed until payment is received in full.

## **7. Cancellation of booking**

- 7.1 In general, once KPHA has commenced delivery of an agreed service provision including pre-learning where relevant, the full Price formally agreed on the Booking Form will be due from the Client.
- 7.2 In the event of a Client wishing to cancel or postpone the delivery of a service, notice should be given to KPHA at the earliest reasonable opportunity. The following cancellation fees will apply, in the circumstances where the notice of cancellation is given; Less than 4 calendar weeks prior to the commencement of service, including pre-course learning where applicable 100% of agreed Price including Registration Fees where applicable.  
Between 8 and 4 calendar weeks prior to the commencement of service, including pre-course learning where applicable 50% of agreed service provision Price and 100% of any Registration Fees KPHA has paid to an Awarding Body.
- 7.3 For the avoidance of doubt in the case of a Delegate not attending or not completing a Course due to:
- An unspecified reason
  - Having repeatedly not completed and/or submitted pre-course assessments
  - Being excluded due to inappropriate behaviour or dress
- The Client will be liable for 100% of the agreed service provision Price and where applicable Registration Fees. Clients will also be liable for any applicable accommodation and meals costs that cannot be cancelled.
- 7.4 In the case of a Delegate not attending or completing a Course due to:
- Illness
  - Urgent domestic difficulties
  - Other humanitarian reasons
- KPHA will endeavour to re-allocate the Delegate to another Course, however a Client will remain liable for Registration Fees, reasonable administration, accommodation and meal costs that cannot be cancelled. In the case that Course re-allocation is not possible the Client will be liable for all costs as per the Booking Form.
- 7.5 Where a Client wishes to cancel their Booking for the reasons set out in clause 2.2 all recoverable costs and payments will be refunded.

## **8. KPHA's rights to cancel**

- 8.1 If KPHA has to cancel an agreed service provision at short notice due to events outside of KPHA's control or the unavailability of key staff or resources, KPHA will:
- Inform the Client at the earliest opportunity
  - Refund payment the Client has made for any service or part thereof which has been cancelled. KPHA are not liable for any other losses incurred by the Client
- 8.2 Where circumstances force KPHA to cancel an open or in-house course or programme, its liability will be limited to refunding the Price paid for that particular Course or programme. KPHA are not liable for any other losses incurred by the Client.
- 8.3 KPHA reserve the right to cancel any agreed provision of extended service by giving 30 calendar days' notice in writing. In such a circumstance KPHA will refund any payment for Services which have been cancelled but require payment for Services delivered up to and including the date of cancellation.

## **9. KPHA's liability**

- 9.1 If KPHA fail to comply with these terms and conditions KPHA will be responsible for reasonably foreseeable direct loss or damage.
- 9.2 If KPHA or its representatives cause damage to a Client's premises KPHA will make good that damage. KPHA will not be liable for any faults or damage to the premises not directly caused by KPHA or its representatives.
- 9.3 KPHA has £5 million of public liability insurance and £5 million of professional indemnity insurance, certificates of which are available for inspection on request.
- 9.4 Except as expressly provided in this Agreement no warranty, condition, undertaking or term, expressed or implied, statutory or otherwise as to the condition, quality performance or fitness for purpose of KPHA Services will be assumed by KPHA and except as expressly provided in this Agreement all such warranties, conditions, undertaking and terms are excluded to the extent permitted by law.
- 9.5 Notwithstanding anything else in the Agreement, the total aggregated liability of KPHA to the Client under or in connection with this Agreement, whether arising under contract or by way of indemnity negligence or otherwise shall subject to clauses 9.6, 9.7, 9.8 and 9.9 below, be limited to the Price paid or payable under this Agreement in the calendar year in which the event giving rise to the breach of this Agreement occurred.
- 9.6 The limitation of liability set out above does not apply to either party's liability arising from:
- Death or injury to persons or
  - Fraud
- 9.7 KPHA shall in no circumstances be liable for any indirect or consequential loss or damage, including, but not limited to, loss of profits, business revenue, business opportunities, goodwill and or anticipated savings even if that loss or damage was reasonably foreseeable or parties were aware of the possibility of that loss or damage arising.



- 9.8 KPHA shall in no circumstances be liable for any theft, loss or damage howsoever caused to any equipment, vehicles, materials, or goods brought to a training venue by a Delegate or Client.
- 9.9 KPHA uses best endeavours to ensure the accuracy and currency of all training material utilised on its Courses. KPHA does not give or imply any warranty as to the currency or accuracy of this material beyond the completion of the Course or its suitability for any other purpose. KPHA will not accept any liability for its training material being used or referred to for any other purpose than the specific training Course it was produced for.

**10. Circumstances outside KPHA's or the Client's control**

- 10.1 KPHA will not be liable or responsible for any failure or delay in delivering agreed service provision due to circumstances or events outside of KPHA's control.
- 10.2 Such events include, but are not limited to: Force majeure events, any form of industrial action whether formal or ad-hoc, civil disturbance of any type, terrorism or the threat of terrorism, failure, obstruction or unavailability of national infrastructure including roads, public transport and communications, war (whether declared or not) or threat or preparation for war, fire, explosion etc.
- 10.3 Notwithstanding the foregoing, KPHA and the Client shall use all reasonable endeavours to continue to perform, or resume performance of, agreed service provision for the duration of such circumstances and re-establish normal service provision as soon after such circumstances pass as is reasonably possible.
- 10.4 Where a Client experiences similar circumstances outside of their control KPHA will suspend service provision at the Client's request and thereafter only invoice for unrecoverable costs at that time until service provision is recommenced.