



CPD GATEWAY TRAINING AND ASSESSMENT

Learner Terms and Conditions



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1. Interpretation

- 1.1 In these terms and conditions:
- 1.2 **“Agreement”** means the Agreement for the IMI to provide Training or Assessment to the Learner as set out in the Order and the Conditions;
- 1.3 **“Conditions”** shall mean these Terms and Conditions;
- 1.4 **“Learner”** means the delegate, lead contact/delegate, attendee, client/purchaser or company to whom or which the IMI has agreed to provide the Training or Assessment;
- 1.5 **“CPD”** means Continuing Professional Development in respect of the training or assessment supplied by the IMI to the Learner;
- 1.6 **“IMI”** means Institute of the Motor Industry, registered in England with its principal place of business at Fanshaws, Brickendon, Hertford SG13 8PQ;
- 1.7 **“CPD Partner”** means the Training Provider or Consultant commissioned by the IMI within a formal partnership to deliver the Training or Assessment to the Learner;
- 1.8 **“Order”** means the booking and booking confirmation detailing the Training or Assessment that the Learner has purchased via the IMI CPD Gateway;
- 1.9 **“Training”** means the training course or on-line training product that the IMI has agreed to supply to the Learner;
- 1.10 **“Assessment”** means the assessment in relation to a training course or on-line product that the IMI has agreed to supply to the Learner;
- 1.11 **“Training or Assessment Materials”** means the training or assessment materials provided in relation to a training course or on-line product.

2. Supply of Training or Assessment

- 2.1 All Training or Assessment supplied by the IMI to the Learner shall be supplied subject to these Conditions. Save in respect of the IMI's rights under condition 2.8 any changes or additions to the Training or Assessment or the Conditions must be agreed in writing between an authorised officer of the IMI and the Learner.
- 2.2 The IMI shall supply the Training or Assessment in accordance with the Order subject to these Conditions. In the event of any conflict between the Order and these Conditions, these Conditions shall apply.
- 2.3 Where Training or Assessment is to be provided at the Learner's premises or other location specified by the Learner, the Learner shall be responsible for ensuring that the premises or location does have the necessary facilities as specified by the IMI in order to ensure that the Training or Assessment can be adequately provided.



- 2.4 If an insufficient number of bookings are received for any Training or Assessment, or for any other reason, the IMI reserves the right to cancel that Training or Assessment and either offer an alternative date, or to refund any pre-paid funds in full.
- 2.5 Where the Learner is a lead contact for an organisation they shall provide the IMI with the contact details of all the learners from that organisation who will be attending the Training or Assessment at the time of booking. Ensuring the notification and attendance of all learners at scheduled Training or Assessment events shall remain the sole responsibility of the Learner where they have created the booking on behalf of others.
- 2.6 The Learner is responsible for ensuring that they or each learner they have made the booking for has a suitable level of skill and competence to participate in the Training or Assessment. The IMI does not accept any responsibility for learners that fail the Training or Assessment due to having an inadequate or inappropriate background or skill level for the Training or Assessment.
- 2.7 The Learner is responsible for ensuring that they or learners they have booked onto Training or Assessment are able to complete the Training and any related Assessment; any circumstances which may adversely affect a learners performance (such as illness) must be notified in advance to the IMI even if this falls on the day the Training or Assessment occurs.
- 2.8 The IMI shall have the right to make any changes to the Training or Assessment which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Training or Assessment.
- 2.9 Where the Training or Assessment is to be provided at a premises or location specified by the IMI, the IMI shall be responsible for ensuring that the premises or location meets the necessary requirements in accordance with health and safety legislation. To the extent that health and safety legislation places any onus on the Learner, such obligations shall be the sole responsibility of the Learner.
- 2.10 The IMI reserve the absolute right to refuse provision of Training or Assessment to the Learner.
- 2.11 **Payment and Charges**
- 2.12 The Learner shall pay any amounts payable to the IMI as set out in the Order or as subsequently updated and notified to the Learner in writing by the IMI in accordance with these Conditions promptly without deduction, withholding or set-off.
- 2.13 If any deduction or withholdings are due to be made from any fees, the Learner shall be obliged to pay the IMI such sum as well after the deduction of withholding has been made, equal to the amount due to be paid to the IMI in the absence of any requirement to make a deduction or withholding.
- 2.14 **All fees for Training and Assessment must be paid in advance** of the Training or Assessment at the time of booking, excepting where this is not possible and an invoice is required. Where the IMI have granted invoice and credit terms to the Learner payment **must still be made in advance** of the Training or Assessment. **The IMI reserve the right to refuse entry to the Training or Assessment if fees have not been paid in advance.**



- 2.15 The IMI shall have the right to charge daily compound interest at the annual rate of 4% above the base rate from time to time of the Bank of Scotland plc upon any sums due but unpaid both before as well as after the judgement.
- 2.16 The sourcing and booking of accommodation is the sole responsibility of the Learner.
- 2.17 Any costs incurred in relation to the booking and payment of accommodation is the sole responsibility of the Learner.
- 2.18 Any costs incurred in relation to travel to and from the Training and Assessment venue are the sole responsibility of the Learner.

3. Cancellation Charges

- 3.1 In the event that the Learner cancels Training or Assessment, or fails to attend Training or Assessment, or has booked onto Training or Assessment learners who fail to attend Training or Assessment, **the following cancellation charges will apply:**
 - 3.1.1 If such notice is delivered at least **20 working days** before commencement of the Training or Assessment , the Learner shall pay to the IMI **25%** of the full Training or Assessment fee, including the costs of any associated ancillary Training or Assessment service provision; or
 - 3.1.2 If such notice is delivered at least **16 working days but less than 20 working days** before commencement of the Training or Assessment , the Learner shall pay to the IMI **50%** of the full Training or Assessment fee including the costs of any ancillary Training or Assessment service provision; or
 - 3.1.3 If such notice is delivered **15 working days or less** before commencement of the Training or Assessment the Learner shall pay to the IMI **100%** of the full Training or Assessment fee, including the costs of any ancillary Training or Assessment service provision; or
 - 3.1.4 **In the event the Learner fails to attend** Training or Assessment without prior notice, or has booked on behalf of others who fail to attend Training or Assessment without prior notice the Learner shall pay to the IMI **100%** of the full Training or Assessment fee, including the costs of any ancillary Training or Assessment service provision
 - 3.1.5 An administration charge (per person) may be levied if Training or Assessment is rescheduled at the Learner's request. In the event that the Learner re-books on an alternative date the IMI may in its absolute discretion waive any administration charge being dependent on the type of Training or Assessment supplied.
 - 3.1.6 For on-line products if the Learner accesses the on-line product by logging onto the system it will be deemed that they have started the Training and **100%** of the on-line product fee is non-refundable.
 - 3.1.7 For on-line products and at the discretion of the IMI full refunds may be made where the on-line product has not been accessed by the Learner logging onto the system and the Learner no longer wants to proceed with the Training.



3.1.8 Subject to set-off by the IMI of any amounts owing to the IMI in accordance with the Agreement, in the event of cancellation, will be paid promptly by the Learner in accordance with the above cancellation fee policy.

3.1.9 It may be necessary, for reasons beyond the control of the IMI including not meeting minimum numbers of learners for the Training or Assessment to be viable, to change the date or venue of the Training or Assessment. In the event of a full cancellation the IMI will make a full refund but disclaim any further liability.

8.2 In the event that the Learner cancels or reschedules their attendance at Training or Assessment then the Learner shall reimburse to the IMI any out of pocket expenses suffered by the IMI as a result of that rescheduling or cancellation being dependent on the type of Training or Assessment supplied and subject to the absolute discretion of the IMI.

4. Warranty and Limitation of Liability

4.1 The IMI warrants to the Learner that the Training or Assessment will be provided using reasonable skill and care and as far as reasonably possible at the times specified by the IMI.

4.2 Where the IMI supplies any goods in connection with the Training or Assessment, the IMI does not give any warranty as to their quality or fitness, but will, where it is able, assign to the Learner the benefit of any warranty given by the supplier.

4.3 The IMI shall have no liability to the Learner for any loss or other claims arising from any Learner's materials or instructions supplied by the Learner which are incomplete, incorrect, inaccurate, or their non-arrival or any other fault of the Learner.

4.4 Except in respect of death or personal injury caused by the IMI's negligence, or as expressly provided in these Conditions, the IMI shall not be liable to the Learner for any losses, damages, costs or other liabilities of the Learner whether direct or indirect or consequential including but not limited to any loss of profit or other economic loss or damage. The aggregate liability of the IMI (except in the case of death or personal injury which arise out of or in connection with the Training or Assessment and the Learner shall indemnify, and keep indemnified, the IMI against claims made by third parties in respect of any such injury referred to above) arising as a result of the Agreement shall not exceed the amount paid by the Learner to the IMI in respect of the Training or Assessment from which the liability arose.

4.5 The IMI shall not be liable to the Learner or be deemed to be in breach of the Agreement by reason of any delay in performing or any failure to perform any of the IMI's obligations in relation to the Training or Assessment, if any delay or failure was due to any cause beyond its reasonable control.

4.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

5. Intellectual Property

5.1 Any intellectual property rights including copyright arising from or in connection with the Training or Assessment, for example copyright in the Training or Assessment Materials and on-line products, shall unless otherwise agreed in writing with the Learner, belong to the IMI or the respective IMI CPD Partner.



- 5.2 The Learner shall not reproduce part or all of the Training or Assessment Materials or on-line products nor replicate any part of the Training or Assessment or on-line products in any form or for any purpose without the prior permission of the IMI or the respective CPD Partner. The re-distribution, re-publication or other making available of the Training or Assessment Materials or on-line products to third parties is prohibited.
- 5.3 The Learner agrees that if it is in breach of the provisions of this clause, it shall indemnify the IMI for any actual or alleged infringement of any intellectual property right including without limitation trademarks, copyright, and misappropriation of trade secrets or any similar property rights.
- 5.4 The Learner agrees to procure the compliance of any learners they have booked onto the Training or Assessment and its employees and sub-contractors with the provisions of this clause 6.

6. Termination

- 6.1 Either the IMI or the Learner may at any time (without limiting any other remedy) terminate this Agreement by giving written notice to the other if:
 - 6.1.1 the other commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within 21 days of being required by written notice to do so; or
 - 6.1.2 the other is unable to pay its debts as they fall due, goes into liquidation, bankruptcy, receivership, administration or proposes any voluntary arrangements with creditors.
- 6.2 Without limiting its other rights or remedies the IMI shall have the right to suspend the Training or Assessment if the Learner fails to pay any amount due under this Agreement on the date due for payment.

7. Consequences of Termination

- 7.1 On termination of the Agreement for any reason:
 - 7.1.1 the Learner shall immediately pay to the IMI any outstanding unpaid invoices and interest and, in respect of Training or Assessment or on-line products supplied but for which no invoice has been submitted, the IMI shall submit an invoice, which shall be payable by the Learner immediately on receipt;
 - 7.1.2 the Learner shall return any Training or Assessment Materials which have not been fully paid for;
 - 7.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
 - 7.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.



8. Confidentiality and Data Protection

- 8.1 Neither the IMI nor the Learner shall divulge or allow to be divulged to any person any confidential information which is identified as such to the other in writing by the IMI or the Learner and which is not in the public domain at the time of disclosure. If a sponsoring party wishes to see the results of Training or Assessment they must gain authority from the Learner that the information can be shared.
- 8.2 The IMI is registered under the Data Protection Act 1998. Personal information supplied to the IMI will be stored securely and used in relation to the Training or Assessment that the Learner has booked or booked on behalf of others;
- 8.3 Personal data will be passed onto the IMI CPD Partners for Training or Assessment or on-line products registration purposes; however the IMI will not divulge any personal information to other third parties without the Learners consent;
- 8.4 Personal data in relation to post Training or Assessment feedback, attendance and achievement data (where applicable) will be passed from the IMI CPD Partner to the IMI to enable the issuing of CPD certificates and on-going Training or Assessment quality improvement. IMI CPD Partners will not divulge any personal information to other third parties without the Learners consent;
- 8.5 Full details of how the IMI process personal information can be seen in the IMI Data Protection register entry which can be found on the Information Commissioner's website www.ico.gov.uk/.
- 8.6 Learners may be contacted by letter or email with details of future Training or Assessment events, on-line products and publications organised or promoted by the IMI, which may be of interest to the Learner. Learners can always opt out at any time.

9. Governing Law

- 9.1 This Agreement shall be governed by the laws of England and Wales and any proceedings arising from it may be brought in the English courts. The submission by the parties to such jurisdiction shall not limit the right of the IMI to commence any proceedings arising out of or in connection with the provision of Training or Assessment or on-line products in any other jurisdiction it may consider appropriate.

10. Notices

- 10.1 All notices hereunder shall be in writing and:
- 10.2 If given or made by letter sent by first class pre-paid post, and if applicable, by airmail, shall be deemed to have been given 24 hours (in the case of domestic post) and 72 hours (in the case of airmail) after being posted and in proving such service it shall only be necessary to prove that the notice was properly addressed, stamped and posted;
- 10.3 If given or made by facsimile transmission shall be deemed to have been given or made when sent unless the notice was sent after 5.00pm on a business day or on a day other than a business day in which case it shall be deemed to have been given or made at 9.00am on the next business day of the



addressee after it was sent; and

- 10.4 Shall be given at the respective address of the other party or at such other address as the other party may have notified in writing as its address from time to time.

11. Entire Agreement

- 11.1 The Agreement constitutes the entire Agreement between the parties. The Learner acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the IMI which is not set out in the Agreement. Any descriptive matter or advertising issued by the IMI, and any descriptions contained in the IMI's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Training or Assessment or on-line products. They shall not form part of the Agreement or any other contract between the IMI and the Learner for the supply of the Training or Assessment or on-line products.
- 11.2 These Conditions apply to the Agreement to the exclusion of any other terms that the Learner seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

12. General

- 12.1 Any failure by the IMI to insist upon strict performance of these Conditions shall not be deemed a waiver of any of the IMI's rights or remedies nor be deemed a waiver of any subsequent default by the Learner.
- 12.2 The invalidity in whole or in part of any clause in these Conditions shall not affect the validity of the remainder of the clauses or these Conditions.
- 12.3 Nothing in the Agreement 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.
- 12.4 A person who is not a party to the Agreement shall not have any rights under or in connection with it.
- 12.5 Any variation, including the introduction of any additional terms and conditions, to the Agreement, shall only be binding when agreed in writing and signed by the IMI.
- 12.6 In the event that the Learner wishes to appeal against an Assessment result or raise a complaint regarding any aspect of the Training or Assessment provided, this will be subject to the CPD Gateway Appeals Process or Complaints Process both of which are available on the IMI website or direct from the IMI.