

## Terms and Conditions

### The contract between us for the supply of Training Services comprises:

The booking confirmation form

Any Special Conditions

Our General Terms and Conditions [revision 01, 3 February 2022]

Our Data Protection Policy [current at the time of order]

In the event of any conflict between any of the elements of the contract, they will be resolved in the priority highest first. The contract between us comes into existence on our sending out an email confirming acceptance of your booking.

### Effective Date: 3 February 2022

These terms and conditions are valid as at the date set out above. Where a booking is made, the terms and conditions in effect at the relevant day apply to that booking and are incorporated by reference into the contract unless stated otherwise in the confirmation of booking. It is advisable for you to save a copy of the relevant terms and conditions for reference with your booking. Where making re-bookings, always check whether the terms and conditions have changed since the last booking.

#### 1. Definitions

- 1.1. "Accreditation" means the formal recognition of a qualification or training course whether by an external body or by a duly qualified internal member of Van Elle personnel and "Accredit", "Accredited" and similar expressions should be construed accordingly.
- 1.2. "Charges" means the course fees and other fees and disbursements payable to Van Elle in respect of the Services provided as further set out below and "Cancellation Charges" mean the charges Van Elle is entitled to charge.
- 1.3. "Confidential Information" means any and all information (whether oral, written or in some other tangible or permanent form) disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") or that is otherwise obtained by the Receiving Party under or in connection with this Agreement and that is marked as confidential, by its nature would be deemed confidential by a reasonable person given the circumstances surrounding disclosure or relates to the business or affairs of the Disclosing Party but shall not include any information which (a) is in the public domain other than as a result of a breach of this Agreement or any other obligations of confidentiality; (b) is or was lawfully received from a third party not under an obligation of confidentiality with respect thereto; (c) is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required); or (d) was developed independently of and without reference to any confidential information disclosed by the Disclosing Party.
- 1.4. "Course Date" means the dates specified on the booking or in the event of a revised or rescheduled booking, as agreed in writing between the parties.
- 1.5. "Customer" means the party identified as such on the booking.
- 1.6. "Customer Representative" means the individual specified on the booking in that role.
- 1.7. "Data Protection Legislation" means all data protection and privacy legislation, regulations, and guidance applicable in respect of a party from time to time including, without limitation as applicable the General Data Protection Regulation (EU) 2016/679 as enacted into English law ("UK GDPR") the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.
- 1.8. "Intellectual Property Rights" means any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, trade secrets, domain names and all similar rights (whether or not registered or capable of registration and whether subsisting in any part of the world) together with any and all goodwill relating or attached thereto and all extensions and renewals thereof
- 1.9. "Location – unless stated otherwise in the booking, Location shall be at Van Elle training centre Kirkby in Ashfield. Where location is not at Van Elle, the Customer must comply with Health and Safety regulations providing adequate welfare and training facilities for the training to take place. This includes safe, fit for purpose plant machinery. We reserve the right to refuse to undertake training or testing where adequate provisions are not provided.
- 1.10. "Personal Protective Equipment" means personal protective equipment to be worn by persons carrying out specific tasks and including Trainees as required by applicable law or best practice or by Van Elle site regulations.
- 1.11. "Services" means the provision of the training and other associated services or chargeable things, or goods specified on the booking or otherwise agreed in writing.
- 1.12. "Trainees" means those persons notified by the Customer to Van Elle in writing who will attend the Location to receive the Services.
- 1.13. "Working Day" means any day except Saturday or a Sunday or any public holiday in England and Wales.
- 1.14. In general in these terms and conditions
  - 1.14.1. Terms importing one gender will include all genders.
  - 1.14.2. Terms importing the singular will include the plural and vice versa.
  - 1.14.3. Terms used in the Data Protection Legislation will bear the same meaning in this contract.
  - 1.14.4. Clause headings are for convenience only and will not affect the construction of the contract.
  - 1.14.5. References to "writing" include email and other forms of electronic messaging provided that a copy can be retained.

#### 2. Booking of Services

- 2.1. Customers may book training in accordance with the published course catalogue and dates set out on Van Elle's website or as advertised in relevant marketing materials or may book individual training courses by quotation via telephone, email, or website contact form and course details, availability, and costs have been agreed. Customers are advised that Accreditation of a specific course or qualification may require an external or internal examiner having specific qualifications, and the availability of Accredited courses may be limited to ensure the availability of such examiners to Accredite the Trainees' performance.
- 2.2. Any special conditions requested for any booking need to be raised with Van Elle (preferably by the Customer Representative discussing it with the Van Elle Representative) by telephone or email and agreed in writing prior to conclusion of the booking. [Course availability may be indicated on the website, but this is indicative only]
- 2.3. Unless specific deadlines for completion of the booking material appear in the relevant online course details the following applies to course booking:

- 2.3.1. Bookings made by telephone, email, or in person require a booking confirmation to be completed as soon as reasonably practicable by the Customer and returned to Van Elle [by email] containing all the information set out on the booking confirmation. If the Customer fails to correct any errors in such confirmation no later than [5] Working Days prior to the date of performance of the Services or, in the case of bookings taken within [5] Working Days prior to performance of the Services, within [48 hours] of receipt of the booking confirmation, Van Elle shall not be responsible for such errors and shall be entitled to perform the Services as set out in the booking or reschedule the same in its sole discretion.
- 2.3.2. The booking is not completed until Van Elle accepts the booking by sending a confirmation email to the Customer.
- 2.3.3. Following completion of the booking, any cancellation or rescheduling by the client may only be carried out in accordance with these terms and conditions and Cancellation Charges may be payable.

### 3. Van Elle's Responsibilities

- 3.1. Subject to the remainder of this contract, Van Elle will perform the Services in reasonable time (also taking account of the accrediting bodies permitted timescales) at the Location using personnel having the appropriate skills and qualifications and in accordance with any course syllabuses and published documentation and will use reasonable endeavours to supply to the Customer prior to the course start date any pre-course information packs including information about any required Personal Protective Equipment required by Trainees attending the training.
- 3.2. Van Elle will provide the Customer and the Trainees with reasonable access to the Location for the purpose of booking or attending a course.
- 3.3. Van Elle will use all reasonable skill, care, and diligence in providing the Services including where relevant procuring any external examiner to provide Accreditation and advising the Customer of any relevant examination fees or other monies payable to external third parties in respect of Accreditation. Such fees will be added to the Charges and billed in accordance with clause 5 below.
- 3.4. Although Van Elle may in its discretion provide reasonable advice and guidance on grants and funding which may be available to the Customer to offset or reclaim the Charges, it is the Customer's sole responsibility to ascertain its eligibility to apply for such grants and funding and to complete all relevant applications and supply all relevant documentation.

### 4. The Customer's Responsibilities

- 4.1. The Customer shall pay the Charges for the Services in accordance with this contract, including where applicable any Cancellation Charges and any external examination fees or other fees to external third parties for Accreditation which Van Elle has procured on the Customer's behalf.
- 4.2. The Customer shall ensure that the agreed Trainees attend at the Location on the course dates at the agreed time to receive the Services and shall also procure:
  - 4.3. that where any previous training or skills record, prior Accreditation, or qualification (in each case as reasonably advised by Van Elle in relevant course literature or required by any Accrediting body) is required for a Trainee to be eligible to attend and complete a course, that the Trainee has such training, skills record, prior accreditation, or qualification, and is in a position to evidence this to the satisfaction of Van Elle.
  - 4.4. that the Trainees are sufficiently competent to receive the Services.
  - 4.5. that where the use of Personal Protective Equipment is required for the purposes of receiving any Services, the Trainees are informed of that requirement and either instructed to bring their own Personal Protective Equipment or supplied with that Personal Protective Equipment by the Customer before arriving at the Location. If Van Elle is obliged to supply any missing Personal Protective Equipment to Trainees where the Customer has been advised of the need for such Personal Protective Equipment, then Van Elle may charge for the same at its published rates available from time to time of where no published rates exist at reasonable cost, plus administration charge.
  - 4.6. that when at the Location, all Trainees comply with the site safety rules together with all reasonable instructions of Van Elle and all relevant laws and policies applicable to the Location or to the Services.
  - 4.7. that it gives Van Elle sufficient advance notice of any specific considerations with respect to individual Trainees (including but not limited to any information related to disabilities or allergies) which may require Van Elle to modify the Services as regards that Trainee or make additional accommodations to reflect that Trainee's specific requirements. The Customer will be responsible for complying with all relevant law including but not limited to the Data Protection Legislation in informing Van Elle of such information; and
  - 4.8. that it removes any Trainee from the Location upon the reasonable request of Van Elle.
- 4.9. The Customer shall be responsible for the negligent acts or omissions of its Trainees or any breach by the same of the site safety rules as if they had been the Customer's own acts, omissions, or breaches.

### 5. Payment Terms

- 5.1. All Charges are quoted exclusive of VAT and will be subject in addition to VAT at the applicable rate and Van Elle will issue a VAT invoice in respect of all Charges payable under this contract.
- 5.2. Where Van Elle allows Customers to open accounts with Van Elle for the payment of Charges it will invoice for Services booked by the Customer on the date of booking. Such invoices are payable within [30 days] of the invoice date.
- 5.3. All Customers without a Van Elle account must pay all Charges set out on the booking together with VAT on the same in cleared funds by credit or debit card or by bank transfer not less than [20] Working Days prior to the date on which the Services are to be provided.
- 5.4. Where the Services are to be provided within [20] Working Days of the date of the booking the Customer must pay the full amount for the Services at the time of submitting the booking.
- 5.5. Van Elle reserves the right to charge interest on all unpaid invoices at the rate of four per cent (4%) over the base rate of the Bank of England from the due date for any invoice until payment of the same.
- 5.6. In the event the Customer has failed or delayed paying any sums payable for external examination or Accreditation or is otherwise overdue in paying for relevant Services, Van Elle may decline to complete or withhold Accreditation of Trainees until the relevant Charges are paid.

### 6. Cancellation and Postponement

- 6.1. 6.1 If Van Elle cannot provide the Services in respect of any Trainees by reason of the Customer's failure to procure any of the matters set out in clause 4.2 above or as a result of the non-attendance of such Trainees, disruptive or uncooperative behaviour of their trainee[s], failure of trainees to provide personal protective equipment that Van Elle cannot provide the Customer will remain fully liable for payment of the Charges in respect of such Trainees.

- 6.2. Van Elle reserves the right to cancel or alter the dates of the provision of Services or the Location or make reasonable variations to the Services (including with respect to the persons providing or Accrediting Services) and will use reasonable endeavours to give the Customer as much notice as reasonably possible of such change or cancellation. In all such cases Van Elle will either offer the Customer a transfer to the next available equivalent course or a course within the next [90 days] but if no such course is available or if the Customer declines, Van Elle will refund any monies already paid in full and will cancel any invoices promptly.
- 6.3. Where the Customer cancels any Services after receipt of the booking and confirmation by Van Elle, the Customer will be responsible for paying the following Cancellation Charges:
- 6.3.1. Where the Services were due to be performed [25 or more Working Days] following the written notice of cancellation from the Customer, we reserve the right to charge any external fees incurred which are non-refundable.
- 6.3.2. Where the Services were due to be performed less than [25 Working Days] following the written notice of cancellation from the Customer the following Cancellation Charges will be due:
- [25%] of the Charges where the cancellation notice is received not later than [20] Working Days before the Services were due to be performed
  - [50%] of the Charges where the cancellation notice is received not later than [15] Working Days before the Services were due to be performed.
  - [75%] of the Charges where the cancellation notice is received not later than [10] Working Days before the Services were due to be performed.
  - [100%] of the Charges where the cancellation notice is received later than [10] Working Days before the Services were due to be performed
- 6.4. Van Elle may in its absolute discretion elect to offer the Customer alternative dates for Services (provided these are for the same courses and Trainees) rather than exercise its rights under clause 6.3 above but shall not be compelled to do so.
- 7. Intellectual Property Rights**
- 7.1. The Intellectual Property Rights in all materials (including without limitation, course notes, handouts, syllabuses, course descriptions, lesson plans, slides and other teaching materials used by Van Elle to offer, promote, or perform the Services) belong to Van Elle or its licensors as the case may be and save as set out in this contract, neither the Customer nor the Trainees obtain any rights in respect of them.
- 7.2. Van Elle grants to the Customer for the benefit of the Trainees a non-exclusive, non-transferable limited licence for the Trainees to use any materials falling within clause 7.1 above for the purposes of receiving training during Van Elle's provision of the Services.
- 8. Confidential Information**
- 8.1. The parties acknowledge that in the course of the performance of the Services Trainees may become aware of Confidential Information of Van Elle.
- 8.2. Customer shall procure that Trainees will keep confidential any such Confidential Information that they may become aware of during Van Elle performing the Services and use it only for the purposes of receiving the Services.
- 8.3. The obligations set out in this clause will survive termination or expiry of the contract and shall persist until such information ceases to be Confidential Information as provided for above.
- 9. Data Protection**
- 9.1. These provisions are in addition to those contained in the Van Elle Privacy Policy appearing at [[POL-025-Privacy-Policy-Van-Elle-Website.pdf](#)] which is also incorporated in and forms part of this contract.
- 9.2. Each party shall be independently responsible for complying with Data Protection Legislation when processing personal data in the performance of its obligations and exercise of its rights under this contract.
- 9.3. The parties acknowledge that they are each data controllers in respect of any personal data used by them to perform this contract and that in particular the Customer acknowledge that Van Elle needs to use personal data of the Customer and of Trainees to perform the Services and to comply with all legal and regulatory duties on Van Elle including but not limited to providing applicable personal data to external examination or Accreditation bodies both in connection with the Accreditation of courses performed by individual Trainees and for regulatory and audit purposes.
- 9.4. Where the Customer needs to provide personal data of Trainees to Van Elle for the purposes of performing the Services, the Customer will ensure that all such personal data is accurate and up-to-date and that it may legally transfer such personal data in accordance with the Data Protection Legislation to Van Elle and authorise Van Elle to use it for the purposes of performing the Services and that it holds and can if necessary produce to Van Elle promptly upon request all relevant consents and authorisations held by it to demonstrate the legal basis of its transfer of such data to Van Elle.
- 9.5. The Customer indemnifies Van Elle against any and all losses, liabilities, damages, costs and expenses suffered or incurred by Van Elle or any of its affiliates as a result of any breach by the Customer of clause 9.4 above.
- 10. Limitation of liability**
- 10.1. Save as provided within Clause 10.3 (excepting clause 10.3.3) Van Elle's total aggregate liability in respect of all causes of action arising out of or in connection with this Agreement (whether for breach of contract, strict liability, tort (including, without limitation, negligence), misrepresentation, restitution or otherwise) ("**Claims**") shall not exceed the greater of the amount of Charges paid or payable by the Customer for the Services
- 10.2. Save as provided within Clause 10.3, Van Elle shall not be liable to the Customer for any Claim to the extent that the Claim relates to:
- 10.2.1. loss of profits.
  - 10.2.2. loss of goodwill.
  - 10.2.3. loss of anticipated savings.
  - 10.2.4. loss of revenue.
  - 10.2.5. loss of data or use of data.
  - 10.2.6. injury to reputation; or
  - 10.2.7. any indirect, incidental, special, exemplary, punitive or consequential loss or damage.

in each case regardless of the form of action, whether in contract, strict liability or tort (including negligence) and regardless of whether the liable party knew or had reason to know of the possibility of the loss, injury or damage in question.

- 10.3. Nothing in this Agreement shall limit or exclude Van Elle's liability:
- 10.3.1. for death or personal injury resulting from negligence.
  - 10.3.2. for fraud or fraudulent misrepresentation.
  - 10.3.3. for breach of Clause 7 (Intellectual Property Rights) Clause **Error! Reference source not found.** (Confidentiality) or 9 (Data Protection).
  - 10.3.4. for breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
  - 10.3.5. for any other liability the exclusion or limitation of which is not permitted by applicable law.

#### 11. Disclaimer and Exclusion of Warranties

- 11.1. While Van Elle will use reasonable endeavours to perform the Services in a timely manner as contemplated by the booking, time shall not be of the essence for any performance obligation of Van Elle.
- 11.2. Save as expressly provided in this contract, Van Elle gives no warranties with respect to the performance of the Services or any other provisions of this contract and any warranties, representations and conditions which might otherwise be implied into this contract are excluded to the greatest extent permitted by law.

#### 12. General

- 12.1. The invalidity or unenforceability of any provision of or any part of a provision of or any right arising pursuant to this contract shall not affect in any way the remaining provisions or rights, which shall be construed as if such invalid or unenforceable part did not exist.
- 12.2. No person not a party to this contract shall have any rights to bring any claim based on it and the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 12.3. Save in respect of payment obligations, neither party shall be liable to the other for any failure or delay in the performance of its obligations under this contract to the extent that such failure or delay arises due to an event outside that party's reasonable control provided always that the party so affected promptly notifies the other, in writing, of the cause and likely duration of the failure or delay, and provided further that such party takes reasonable steps to mitigate any impact of such event, for example using its disaster recovery plans.

#### 13. Entire Agreement

- 13.1. This contract contains all the terms agreed by the parties relating to its subject matter and supersedes any prior agreements, understandings, or arrangements between them, whether oral or in writing. No additional terms stated or referred to in any purchase order placed by the Customer shall vary this contract unless the parties have agreed in writing that they are to be included as Special Conditions. No representation, undertaking or promise shall be taken to have been given or implied from anything said or written in negotiations between the parties prior to this contract except as set out in this contract. Each party acknowledges and accepts that, in entering this contract, it has not relied upon any representation, undertaking or promise except as set out herein.

#### 14. Amendment and Variation

- 14.1. These terms and conditions may be varied by Van Elle from time to time, but no variation of these terms will become binding on a Customer except in respect of bookings for Services placed after the date of such variation of the terms and conditions. Except for the foregoing, the contract may only be amended or varied by agreement in writing signed by each party's Representative.

#### 15. Dispute Resolution

- 15.1. If any dispute arises between the parties with respect to the contract, the person raising the dispute will raise it via their Representative with the other party's Representative and shall attempt to resolve the dispute by negotiation. In the event the parties' Representatives have not been able to resolve the dispute within [5 Working Days] of the dispute being raised with them, each party may escalate the dispute to a director of that party.

#### 16. Assignment and Subcontracting

- 16.1. Van Elle shall be entitled to subcontract any of its obligations under this contract to a third party provided always that Van Elle shall remain primarily responsible for the acts or omissions of such third party under this contract and provided further that the third party is contractually bound to confidentiality and intellectual property provisions that are at least as protective of the Customer's Confidential Information and Intellectual Property Rights as this contract.
- 16.2. Neither party may assign, transfer, mortgage, charge, sub-license or otherwise dispose of ("assign") the whole or any part of this contract without the prior written consent of the other party. Notwithstanding the foregoing, each party shall be permitted to assign the whole or any part of this contract to the purchaser of all or substantially all of its assets without the consent of the other party.

#### 17. Law and Jurisdiction

- 17.1. The contract shall be governed by the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction with respect to any disputes arising pursuant to the contract.