

Agreed terms

These terms and conditions apply to a Course provided by Scottish Association for Marine Science (SAMS) (the “Supplier”).

Please read these terms and conditions carefully before purchasing a Course and print off a copy for your records.

For applications via the Supplier’s website, by selecting the box agreeing to the terms and conditions, you agree to the terms of these terms and conditions (which may be varied from time to time in accordance with clause 15) which will bind you. If you do not agree to these terms and conditions, you must cease to continue to apply for any Course from the Supplier. By selecting the box agreeing to the terms and conditions, you warrant that you have authority to bind your business or company to these terms and conditions and the Charges.

1. Interpretation

The following definitions and rules of interpretation apply in these terms and conditions.

1.1 Definitions

Applicable Laws: all applicable laws, statutes, regulations and codes from time to time in force.

Applicable Data Protection Laws: means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

Working Day: a day, other than a Saturday, Sunday or public holiday in Scotland, when banks in Edinburgh are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Working Day.

Charges: the sums payable for the Services, as set out on the Website.

Course: the provision of a course, as detailed on the Supplier’s website or as agreed between the Supplier and the Customer.

Course Materials: means the curriculum, training method, training materials, presentations and any other supporting documents in any medium, whether hard-copy or electronic, used by the Supplier in connection with the Course.

Customer (or “you”): the person or firm who purchases the Course from the Supplier.

EU GDPR: means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Supplier: Scottish Association for Marine Science with company number SC009292 and registered address at SAMS, Dunbeg, Oban, PA37 1QA .

Supplier Personal Data: any personal data which the Supplier processes in connection with these terms and conditions, in the capacity of a controller.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

Website: means <https://www.sams-enterprise.com/sra/>

Clause headings shall not affect the interpretation of these terms and conditions.

- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 These terms and conditions shall be binding on, and enure to the benefit of, the Customer and the Supplier and their respective personal representatives,

successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

- 1.7 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.9 A reference to **writing** or **written** includes email.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to **these terms and conditions** or to any other agreement or document referred to in these terms and conditions is a reference of these terms and conditions or such other agreement or document, in each case as varied from time to time.
- 1.12 References to clauses and Schedules are to the clauses and Schedules of these terms and conditions and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.13 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Commencement and duration

- 2.1 These terms and conditions shall commence on the date when the Customer accepts these terms and conditions, as described in the opening of these terms and conditions and shall continue, unless terminated earlier in accordance with clause 11 (Termination), or until completion of the Course when these terms and conditions shall terminate automatically without notice.
- 2.2 A Course is not booked until the Charges have been paid.
- 2.3 The Supplier shall provide the Course to the Customer in accordance with these terms and conditions from the date stated on the Website or in the Supplier's confirmation email.

3. Supplier's responsibilities

- 3.1 The Supplier shall use reasonable endeavours to supply the Course in accordance with these terms and conditions in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified on the Website but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of these terms and conditions. The Customer acknowledges that dates of the provision of the Course may be amended due to reasons out-with the control of the Supplier, including, but not limited to, weather conditions and issues with third party suppliers.
- 3.3 This course has been The Institute of Marine Engineering: IMarEST CPD-recognised and a digital completion certificate will be issued post completion, beyond this the Supplier does not guarantee that the Customer will obtain any particular result, qualification or opportunity from the completion of the Course.
- 3.4 If booked in advance, no later than 1 calendar month prior to the Course start date, the Supplier will send the Customer a confirmation email (at the email provided by you online), that the Course minimum attendee number has been reached and the Course will proceed.
- 3.5 An additional email with joining instructions will be provided no less than 5 Working Days, prior to the Course start date, or on completion of an application and payment of the Charges, if later.

4. Customer's obligations

- 4.1 The Customer shall:
 - (a) co-operate with the Supplier in all matters relating to the Course;
 - (b) comply with all applicable health and safety requirements or other requirements at the premises of the Supplier or a third party providing all or part of the Course on behalf of the Supplier as notified to it by the Supplier or such other third party providing all or part of the Course. Failure to do so will be a material breach which is incapable of remedy for the purposes of clause 11.1(a);
 - (c) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or third party) required by the Supplier in connection with the Course and ensure that they are accurate and complete;

- (d) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Course, in all cases before the date on which the Course is to start;
- (e) arrive on time for all aspects of the Course;
- (f) not undertake any actions or omissions which the Supplier (acting reasonably) considers to be dangerous. Any breach of this sub-clause (f) shall be a material breach which is incapable of remedy for the purposes of clause 11.1(a).

4.2 If the Supplier's performance of its obligations under these terms and conditions is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

4.3 If the Customer is late or fails to arrive for any part of the Course, the Supplier will be under no obligation to supply any additional materials, provide a re-cap or take any other action in support of the Customer being supplied the missed section of the Course. If the absence is significant, at the sole discretion of the Supplier, the Customer may be refused participation in the remainder of the Course. Under the circumstances described in this clause, no refund of any share of the Charge will be given.

5. Charges and payment

5.1 In consideration of the provision of the Course by the Supplier, the Customer shall pay the Charges.

5.2 The Charges shall be payable either online, by card, at time of booking or on receipt of an invoice, sent from the Supplier via email within 3 Working days from application submission to the applicant business, which will be payable within 7 Working days of receipt. The amount of Charges will be as set out on the Website and confirmed in the invoice.

5.3 Charges not paid in full, within 7 Working days of invoice being issued, will result in the Course place(s) being re-advertised for sale and will no longer be considered as booked.

5.4 Payment of the Charges, following issue of an invoice, will be made by bank transfer, unless otherwise agreed between the Supplier and the Customer.

- 5.5 The Supplier shall not be liable for the cost of hotel, subsistence, travelling and any other ancillary expenses incurred in attending the Course by the Customer.
- 5.6 All sums payable to the Supplier under these terms and conditions:
- (a) are exclusive of VAT, and the Customer shall in addition, subject to clause 5.5, pay an amount equal to any VAT chargeable on those sums; and
 - (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.7 If the Customer is not required to pay VAT, this should be declared when applying for the Course. The Supplier may require to charge the Customer for any other applicable tax.

6. Intellectual property rights

- 6.1 In relation to the Course Materials:
- (a) the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Course Materials;
 - (b) the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence of the Course Materials for the purpose of receiving and using the Course and the Course Materials for the Customer's own development and learning purposes only; and
 - (c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.1(b) and 6.1(b).

7. Compliance with laws and policies

- 7.1 In performing its obligations under these terms and conditions, the Supplier shall comply with the Applicable Laws.
- 7.2 Changes to the Course required as a result of changes to the Applicable Laws shall be notified to the Customer by the Supplier

8. Data protection

- 8.1 For the purposes of this clause 8, the terms **controller**, **processor**, **data subject**, **personal data**, **personal data breach** and **processing** shall have the meaning given to them in the UK GDPR.
- 8.2 Both parties acknowledge that the Supplier is the data controller in relation to the Supplier Personal Data. The Supplier will use the Supplier Personal Data in accordance with the Supplier's privacy notice on the website. The Supplier will process the Customer's personal data in accordance with Applicable Data Protection Laws.
- 8.3 The Supplier's liability for losses arising from breaches of this clause 8 is as set out in clause 10.

9. Confidentiality

- 9.1 Each party undertakes that it shall not at any time during these terms and conditions, and for a period of five years after termination or expiry of these terms and conditions, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.2.
- 9.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with these terms and conditions. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these terms and conditions.

10. Limitation of liability

- 10.1 Nothing in these terms and conditions limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;

(b) fraud or fraudulent misrepresentation.

10.2 Subject to clause 10.1, the Supplier's total aggregate liability to the Customer arising from or in connection with these terms and conditions shall be limited to the lower of the Charges or TEN THOUSAND POUNDS STERLING (£10,000).

10.3 Subject to clause 10.1, the Supplier shall not be liable for any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

10.4 References to liability in this clause 10 include every kind of liability arising under or in connection with these terms and conditions including but not limited to liability in contract, delict (including negligence), misrepresentation, restitution or otherwise.

11. Termination

11.1 Without affecting any other right or remedy available to it, either party may terminate these terms and conditions with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of these terms and conditions and (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of these terms and conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to these terms and conditions;
- (c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in

another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (d) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (e) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of these terms and conditions is in jeopardy.

11.2 Without affecting any other right or remedy available to it, the Supplier may terminate these terms and conditions with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under these terms and conditions on the due date for payment; or
- (b) the Course does not meet the required minimum numbers required, in the Suppliers reasonable opinion, to cover the cost of running the course. The Customer shall receive a full refund of the Charges if these terms and conditions are terminated pursuant to this clause 11.2(b).
- (c) there is a change of control of the Customer.

11.3 The Supplier may terminate these terms and conditions by providing thirty (30) days' written notice to the Supplier. Where the Supplier terminates these terms and conditions in accordance with this clause 11.3, it shall return the Charges already paid by the Customer for any portion of the Course which has not already been supplied at the date of termination.

11.4 The Customer may terminate these terms and conditions if the Supplier is unable to provide the Course on the dates as advertised on the Website in accordance with clause 3.2 and no alternative dates can be agreed. The Customer shall receive a full refund of the Charges if these terms and conditions are terminated pursuant to this clause 11.4.

11.5 The Customer may terminate these terms and conditions immediately if it no longer wishes to attend the Course and alternative dates for the provision of the Course cannot be agreed. If these terms and conditions are terminated in accordance with this clause 11.5, prior to one (1) calendar month prior to the Course commencement date, a full refund of the Charges paid will be given. Within one (1) calendar month of the Course commencement date, no refund will be given.

12. Obligations on termination and survival

12.1 Obligations on termination or expiry

On termination or expiry of these terms and conditions the Customer shall immediately cease to use the Course Materials and the licence granted at clause 6.1(b) shall cease immediately.

12.2 Survival

- (a) On termination or expiry of these terms and conditions, the following clauses shall continue in force: clause 1 (Interpretation), clause 6 (Intellectual property rights), clause 9 (Confidentiality), clause 10 (Limitation of liability), clause 12 (Obligations on termination or expiry and survival), clause 16 (Waiver), clause 18 (Severance), clause 23 (Governing law) and clause 24 (Jurisdiction).
- (b) Termination or expiry of these terms and conditions shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of these terms and conditions which existed at or before the date of termination or expiry.

13. Force majeure

13.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) non-performance by suppliers or subcontractors; and
- (h) interruption or failure of utility service.

13.2 Provided it has complied with clause 13.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under these terms and conditions by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of these terms and conditions or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

13.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under these terms and conditions; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

13.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than thirty (30) days, the party not affected by the Force Majeure Event may terminate these terms and conditions by giving fourteen (14) days' written notice to the Affected Party.

14. **Assignment and other dealings**

14.1 These terms and conditions are personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under these terms and conditions.

14.2 The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under these terms and conditions, provided that the Supplier gives prior written notice of such dealing to the Customer.

15. **Variation**

No variation of these terms and conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16. **Waiver**

16.1 A waiver of any right or remedy under these terms and conditions or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

- 16.2 A failure or delay by a party to exercise any right or remedy provided under these terms and conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these terms and conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17. Rights and remedies

The rights and remedies provided under these terms and conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

18. Severance

- 18.1 If any provision or part-provision of these terms and conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these terms and conditions.
- 18.2 If any provision or part-provision of these terms and conditions is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

19. No partnership or agency

- 19.1 Nothing in these terms and conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 19.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

20. Third party rights

- 20.1 These terms and conditions does not give rise to any rights under the Contracts (Third Party Rights) (Scotland) Act 2017 to enforce any term of these terms and conditions.

21. Notices

- 21.1 Any notice or other communication given to a party under or in connection with these terms and conditions shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the following address:
 - (i) For the Supplier: info@sams-enterprise.com
 - (ii) For the Customer: the email address given when registering for the Course.

21.2 Any notice or other communication shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours, when Business Hours resume.

21.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22. **Dispute resolution procedure**

22.1 If the Customer has any concerns with the Course or the Supplier, it shall contact the Supplier via email at info@sams-enterprise.com. If this does not resolve an issue, the Customer shall follow the process as set out in clause 22.2 below.

22.2 If a dispute arises out of or in connection with these terms and conditions or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, a senior representative of the Customer and the Head of Enterprise of the Supplier shall attempt in good faith to resolve the Dispute;
- (b) if the senior representative of the Customer and the Head of Enterprise of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties may commence court proceedings in relation to the Dispute under clause 24.

23. Governing law

These terms and conditions and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with Scottish law.

24. Jurisdiction

Each party irrevocably agrees that the Scottish Courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these terms and conditions or its subject matter or formation.