

Terms and Conditions

CONDITIONS FOR PROVISION OF MOVING & HANDLING (MANUAL HANDLING) TRAINING & RELATED SERVICES TO CONSUMERS AND BUSINESSES

1 INTERPRETATION

1.1 In these conditions the following words have the following meanings:

Contract: means a contract which incorporates these conditions and made between the Customer and the Supplier for the provision of Moving & Handling (Manual Handling) training and/or related services;

Customer: means the person, firm, company or other organisation purchasing the training and/or services;

Force Majeure: means any event outside a party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, sub-contractors, lock-outs, riots, civil commotion, malicious damage, explosion, terrorism, governmental actions and any other similar events;

Liability: means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;

Supplier: means Highland Neuromuscular Movement Services (HNMS);

Services: means the services to be performed by the Supplier for the Customer, including but not limited to: Manual Handling training, Moving and Handling training, Risk Assessment, Health Promotion advice, client assessment;

Information: means any verbal or written material passed on to the Customer by the Supplier.

2 BASIS OF CONTRACT

2.1 Services are provided to the Customer at the date/s and time/s agreed by the Customer and Supplier. The Supplier will not be liable for any loss suffered by the Customer as a result of the Customer making alterations to the original agreement.

2.2 Nothing in this Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a consumer. Where the Customer is acting as a consumer any provision which is marked with an asterisk (*) may, subject to determination by the Courts, have no force or effect.

3 OWNERSHIP AND INTELLECTUAL PROPERTY

3.1 Ownership of any information (verbal and written) provided by the Supplier remains at all times with the Supplier. The Customer has no right, title or interest in the information except that it is used by the Customer for its intended purpose.

The Customer must not deal with the ownership of the information. This includes but is not limited to selling, assigning, copying, plagiarising, and/or lending without the prior written consent of the Supplier.

4 PAYMENT

- 4.1** The amount of charges for any Services shall be as quoted to the Customer or otherwise as shown in the Supplier's current price list from time to time. Where a Deposit is required it must be paid in advance of the Customer receiving the Services.
- 4.2** The Customer shall pay the charges for any Services and/or any other sums payable under the contract to the Supplier at the time and in the manner agreed. The Supplier's prices stated in the Contract will be all inclusive.
- 4.3** Payment by the Customer on time under the Contract is an essential condition of the Contract. Payment shall not be deemed to be made until the Supplier has received either cash, cheque or direct bank transfer in respect of the full amount outstanding.
- 4.4*** If the Customer fails to make any payment in full on the due date the Supplier may charge the Customer interest (both before and after judgment/decree) on the amount unpaid at the rate implied by law under the Late Payment of Commercial Debts (Interest) Act 1998 (where applicable) or at the rate of 4% above the base rate from time to time of the Supplier's bank whichever is higher.
- 4.5*** The Customer shall pay all sums due to the Supplier under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 4.6** The Supplier may set a reasonable credit limit for the Customer. The Supplier reserves the right to terminate or suspend the Contract for provision of Services if allowing it to continue would result in the Customer exceeding its credit limit or the credit limit is already exceeded.

5 TERMINATION/CANCELLATION BY NOTICE

- 5.1** If the provided services have a fixed duration, subject to the provisions of Section 6 neither the Customer nor the Supplier shall be entitled to terminate/cancel the Contract before the expiry of that fixed period unless agreed with the other party.
- 5.2** If the provided services do not have a fixed duration either of the Customer or the Supplier is entitled to terminate/cancel the Contract upon giving to the other party any agreed period of notice.

6 DEFAULT

- 6.1** If the customer:
- 6.1.1** fails to make any payment to the Supplier when due without just cause;
- 6.1.2** breaches the terms of the Contract and, where the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
- 6.1.3** persistently breaches the terms of the Contract;
- 6.1.4** provides incomplete, materially inaccurate or misleading facts and/or information in connection with the Contract;
- 6.1.5** pledges, charges or creates any form of security over any Hire Goods or proposes to compound with its creditors, creates a trust deed for its creditors, applies for an interim moratorium in respect of claims and/or proceedings, any distress/diligence, execution or other legal process is levied on any property of the Customer, has a Bankruptcy Petition/Petition for Sequestration presented against it or the Customer takes or suffers any similar action in any jurisdiction;
- 6.1.6** being a company, ceases or threatens to cease to carry on business, enters into voluntary or

compulsory liquidation, has a receiver, administrator or administrative receiver or in the Republic of Ireland an examiner appointed over all or any of its assets, any attachment order/arrestment is made against the Customer, any distress/diligence, execution or other legal process is levied on any property of the Customer or the Customer takes or suffers any similar action in any jurisdiction;

- 6.1.7 appears reasonably to the Supplier due to the Customer's credit rating to be financially inadequate to meet its obligations under the Contract; and/or
- 6.1.8 appears reasonably to the Supplier to be about to suffer any of the above events; then the Supplier shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 6.2 below.
- 6.2** If any of the events set out in clause 6.1 above occurs in relation to the Customer then:-
 - 6.2.1 the Supplier may withhold the performance of any Services and cease any Services in progress under this and/or any other Contract with the Customer;
 - 6.2.2 the Supplier may immediately cancel, terminate and/or suspend without Liability to the Customer the Contract and/or any other contract with the Customer; and/or
 - 6.2.3* all monies owed by the Customer to the Supplier shall immediately become due and payable.

7 LIMITATIONS TO LIABILITY

- 7.1*** All representations, terms, conditions and duties implied by law relating to fitness, quality and/or adequacy are excluded to the fullest extent permitted by law.
- 7.2*** If the Supplier is found to be liable in respect of any loss or damage to the Customer's property the extent of the Supplier's Liability will be limited to the retail cost of replacement of the damaged property.
- 7.3*** The Supplier shall have no Liability to the Customer if, without just cause, any monies due in respect of the Training and/or the Services have not been paid in full by the due date for payment.
- 7.4** The Customer shall give the Supplier a reasonable opportunity to remedy any matter for which the Supplier is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Supplier shall have no Liability to the Customer.
- 7.5*** The Supplier shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance arranged as a result of the Contract and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Supplier.
- 7.6** The Supplier shall have no Liability to the Customer for any:-
 - 7.6.1* consequential losses (including loss of profits and/or damage to goodwill);
 - 7.6.2 economic and/or other similar losses;
 - 7.6.3 special damages and indirect losses; and/or
 - 7.6.4 business interruption, loss of business, contracts and/or opportunity.
- 7.7** Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

- 7.7.1 Liability for breach of contract;
- 7.7.2* Liability in tort/delict (including negligence); and
- 7.7.3 Liability for breach of statutory and/or common law duty.
- 7.4 Nothing in this Contract shall exclude or limit the Liability of the Supplier for death or personal injury due to the Supplier's negligence nor exclude or limit any other type of Liability which it is not permitted to exclude or limit as a matter of law.

8 GENERAL

- 8.1 Upon termination of the Contract the provisions of clauses **4.2, 4.3, 4.4** shall continue in full force and effect.
- 8.2 Each provision of services shall form a distinct Contract which shall be separate to any other Contract relating to other services.
- 8.3 The Customer shall be liable for the acts and/or omissions of its employees, agents, servants and/or subcontractors as though they were its own acts and/or omissions under this Contract.
- 8.4* The Customer agrees to indemnify and keep indemnified the Supplier against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the Supplier and arising from or due to any breach of contract, any tortious/delictual act and/or omission and/or any breach of statutory duty by the Customer.
- 8.5* No waiver by the Supplier of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision. If any provision is held by any competent authority to be unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 8.6 The Supplier shall have no Liability to the Customer for any delay and/or non performance of a Contract to the extent that such delay is due to any Force Majeure events. If the Supplier is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
- 8.7 All third party rights are excluded and no third parties shall have any rights to enforce the Contract. This Contract is governed by and interpreted in accordance with the law of the country where the Supplier is located and that country will have exclusive jurisdiction in relation to this Contract.

I agree to the aforementioned Terms and Conditions of Highland Neuromuscular Movement Services

Signed:

Print Name:

Designation:

Date: