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**“Institute Approved” Terms And Conditions**

**General Terms & Conditions**

1. **DEFINITIONS**
   1. In this Agreement, unless the context otherwise requires, the terms described in the Special Terms shall have the meanings ascribed to them there and the following words and expressions shall have the following meanings:

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| --- | --- |
| **Associated Company** | means a company which is a subsidiary, a holding company or ultimate holding company of the Customer, or any company which is a subsidiary of any such subsidiary, holding company or ultimate holding company.  A company is a “subsidiary” of another company, or its “holding company”, if that other company:  (a) holds a majority of the voting rights in it; or  (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or  (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it, and “company” shall include any corporate body; |
| **Confidential Information** | means the existence and terms of this Agreement and any other information of the Customer and/or its Associated Companies relating to trade secrets, plans, intentions, product information, lists of members, suppliers or customers, know-how, financial information, affairs or other business of the Customer and/or its Associated Companies, communicated in any form which is marked as confidential or might reasonably be considered to be confidential in nature; |
| **Intellectual Property Rights** | means any and all registered and unregistered trade marks, copyright, rights in and to computer software (whether in source code or object code), database and compilation rights, patents, registered and unregistered design rights, registered and unregistered trade marks and all other industrial, commercial or other intellectual property rights howsoever arising and existing in any jurisdiction and in whatever media and any applications for their protection or registration and all renewals and extensions and all rights to apply for the same; |
| **Licensed Products** | means any Product or item of Associated Material which bears any Trade Mark; and |
| **Party or Parties** | means the Licensor and the Licensee individually or together as applicable. |

* 1. Words denoting the singular include the plural and vice versa unless the context otherwise requires, words of any one gender include both genders and may be used interchangeably, and words denoting natural persons include corporations and firms.
  2. If there is any manifest conflict or inconsistency between the Special Terms and any other part of this Agreement, the Special Terms shall prevail.
  3. Any reference to an enactment, order, regulation or other similar instrument includes a reference to that enactment, order, regulation or instrument as from time to time amended, extended or re-enacted.
  4. The headings of this Agreement are for ease of reference only and shall not affect its interpretation or construction.

1. **Application of the Trade Marks** 
   1. No trade mark or logo may be affixed to Licensed Products in any form whatsoever without the written consent of the Licensor. The Licensee must not use in its business any other trade mark confusingly similar to any Trade Mark and must not without the written consent of the Licensor use any Trade Mark or any word confusingly similar to any Trade Mark as, or as part of, its corporate or trading name.
   2. In addition to the Licensed Products the Licensee may use the Trade Marks on its website for the purpose of indicating that the Licensed Products are approved by the Licensor and as an icon on which visitors to the Licensee’s website may click in order to be connected to [www.institutelm.com](http://www.institutelm.com) (or such other web address as the Licensor may notify you in writing).
2. **Quality control and approval** 
   1. The Licensee shall not either itself or through its agents, employees or representatives engage in any activity nor issue any Licensed Product or other item which would in the reasonable opinion of the Licensor bring or be likely to bring the name and reputation of the Licensor, and/or its Associated Companies, into disrepute.
   2. Every Licensed Product must have the prior written approval of the Licensor unless it is in a format previously approved as such by the Licensor. The Licensee shall deliver a sample of each Licensed Product (in a form reasonably required by the Licensor) to the Licensor at the address given in the Special Terms on the Sample Delivery Date specified in the Special Terms and, on receipt, the Licensor shall review the same and shall use its best endeavours, within a period of 6 (six) weeks following receipt, to send to the Licensee written notice that the sample:
      1. is approved by the Licensor; or
      2. is not approved by the Licensor, which notice will be accompanied by the Licensor’s reasons for declining to give approval, the Licensor’s reasonable requirements for rectification and the timing of re-submission for approval.
   3. Upon receipt of a notice under clause 3.2.2, the Licensee shall free of charge alter or modify the sample in accordance with the Licensor’s requirements and re-submit it to the Licensor for approval.
   4. The Licensee shall not issue any Licensed Product which has not received the Licensor’s prior written approval or does not comply with an approved format.
   5. The Licensee shall comply strictly with the Licensor’s directions (in relation to procedures or otherwise) and with any relevant the Licensor guidelines in relation to the Licensee’s use of any Trade Mark. The Trade Marks must be used only in the form provided by the Licensor and must not be taken from any other source.
   6. The Licensee shall make no changes to any approved Licensed Product without the prior written approval of the Licensor.
   7. In the event that the Licensee intends to make changes to the Licensed Products, it shall notify the Licensor in writing and deliver a sample of the amended Licensed Products to the Licensor in accordance with clause 3.2. The Licensee acknowledges that a re-approval fee may be payable to the Licensor in respect of the re-approval of the amended Licenced Products, which the Licensor shall notify the Licensee of prior to carrying out the re-approval work.
   8. One copy of each Licensed Product as issued by the Licensee (including a copy of each item produced in an approved format) shall be sent immediately on request to the Licensor address for samples given in the Special Terms.
   9. Licensed Products:
      1. shall be safe and fit for the use for which they are intended, and free from any material defects;
      2. shall be of good design, material and workmanship;
      3. shall not contain any defamatory matter nor be obscene, blasphemous, objectionable or indecent; and
      4. and all activities in relation to which any Trade Mark is used under this Agreement shall comply with all applicable laws and regulations of governmental or other competent authorities in the Territory and with any established industry standards in the Territory.
   10. Where the Licensed Products are offered via a website, the Licensee shall ensure that the website is supported, maintained, and sufficiently available to users of the Licenced Products. The Licensor shall not be responsible for any issues arising in relation to the website.
   11. The Licensee shall not state or imply whether on the Licensed Product or elsewhere that use of the Licensed Product is required for, or will guarantee a pass in, any qualification offered by the Licensor or any Associated Company.
3. **Consideration and payment terms**
   1. The Licensee agrees to pay the Fee to the Licensor.
   2. Within 30 days after the end of each Accounting Period the Licensee shall deliver to the Licensor a written statement in a form reasonably required by the Licensor setting out the number of Licensed Products sold in that Accounting Period, the Fee due and any other information that the Licensor may reasonably require for the purposes of calculating or verifying it.
   3. The Licensee shall keep separate and detailed records in order to enable the Licensor to check the accuracy of the information due from the Licensee. After giving written notice of 10 working days, the Licensor, or any other person authorised by it, shall be entitled to inspect the Licensee’s records during normal business hours and to take away copies in order to verify the information provided by the Licensee. This right of inspection shall remain in effect for a period of one year after termination of this Agreement. Each such audit shall be carried out at the Licensor’s expense unless it reveals a deficiency of 5% (five percent) or more of the Fee paid by the Licensee in which event the Licensee shall pay the costs thereof. The Licensor shall invoice the Licensee for any deficiency in the payment of the Fee revealed by the audit, together with the audit costs if payable by the Licensee,
   4. The Licensee shall settle any invoice properly rendered by the Licensor by BACS transfer to the bank account of the Licensor (as from time to time notified to the Licensee in writing) as soon as reasonably practicable after receipt of that invoice but in any event no later than 28 days after receipt.
   5. The payments due to the Licensor under this Agreement shall be exclusive of VAT and any other applicable sales tax which, if chargeable, shall be payable by the Licensee in addition to the payments at the prevailing rate.
   6. Except where the invoice is subject to a bona fide dispute, if the Licensee fails to pay any sums when due, the Licensor shall be entitled to interest (both before and after any judgment) on the amount due at the rate of two percent (2%) per annum above the base rate prevailing from time to time, calculated from the date due until the date of payment
4. **Trade mark rights**
   1. The Licensee hereby acknowledges and agrees that the Licensor is the registered owner of the word mark and device part of the Trade Marks, and the goodwill relating to it, and that the benefit of the use of “Approved by The Institute of Leadership and Management” and “Institute of Leadership & Management” by the Licensee will belong to the Licensor.
   2. The Licensee hereby acknowledges and agrees that the Licensor is the owner of the copyright in the Trade Marks.
   3. The Licensor may at any time call for a confirmatory assignment of the goodwill in favour of the Licensor and the Licensee must immediately execute it.
   4. The Licensee will (unless otherwise agreed in writing by the Licensor) cause the Trade Marks to appear on every Licensed Product in such position as the Licensor shall reasonably require. The Licensee will not make or attempt to make any trade mark application in relation to any Trade Mark or any element thereof or any confusingly similar word or words, nor do anything to impair any registration of any Trade Mark or diminish the Licensor’s rights in it. If in the Licensor’s opinion it is necessary or desirable, the Licensor may register the Licensee in any part of the Territory as licensee or registered user of any Trade Mark and the Licensee shall render to the Licensor such assistance as may be necessary to achieve this.
   5. The Licensee will not use the Trade Mark in any way which: (1) misrepresents the relationship between the Licensee and the Licensor; and (2) misleads or likely to mislead members of the public.
   6. The Licensee will not use any Trade Mark in any way or for any purpose other than as set out in this Agreement and, except as provided by this Agreement or any other written agreement between the Licensor or any Associated Company and the Licensee, shall not make use of the Trade Marks, the name of the Licensor or any of its Associated Companies or of any other Intellectual Property Right belonging to the Licensor or any Associated Company.
   7. If the Licensee becomes aware of any infringement of the Licensor’s rights in any Trade Mark, the Licensee will immediately notify the Licensor in writing. The Licensor will be under any obligation to take action, but if they do so the Licensee will render them whatever assistance they reasonably require and the Licensor shall indemnify the Licensee for any costs reasonably incurred in giving such assistance.

**6 Suspension of marks**

6.1 The Licensor makes no representation nor gives any warranty that any third party has not acquired rights to the Trade Marks in any part of the Territory and consequently gives no indemnity nor promise to hold harmless or defend the Licensee from any claim in any country by a third party that the use by the Licensee any of the Trade Marks is in breach of such third party's rights (“**Claim**”).

* 1. The Licensee shall inform the Licensor immediately of any Claim which comes to the knowledge of the Licensee, and, if any Claim is in the opinion of the Licensor well-founded, the Licensee shall if so requested by the Licensor forthwith cease to use the relevant Trade Mark(s) in the country concerned.

## Without prejudice to clause 6.2, if at any time the Licensor notifies the Licensee that it considers that any risk associated with the exercise in any part of the Territory of the rights granted in this Agreement in respect of any of the Trade Marks is unacceptable to the Licensor, the Licensor may at its discretion instruct the Licensee to cease using the relevant Trade Mark(s) in the specified part of the Territory.

1. **Confidentiality**
   1. The Licensee shall not use, copy, adapt, alter, disclose or part with possession of any Confidential Information without the prior written consent of the Licensor except that the Licensee may disclose, subject to clause 7.3, any Confidential Information to such directors, employees, professional advisors and approved sub-contractors to whom disclosure is strictly necessary for the purposes of this Agreement.
   2. The foregoing obligations shall not apply to Confidential Information that:
      1. was known to the Licensee (as can be evidenced by its written records) prior to receipt from the Licensor;
      2. is received by the Licensee (as can be evidenced by its written records) from a third party without breach of any other confidentiality arrangements;
      3. is or becomes public knowledge other than by breach of this clause or is independently developed by or for the Licensee; or
      4. is required to be disclosed by any applicable law or by order of any court of competent jurisdiction or any government body, agency or regulatory body, provided that the Licensee shall use all reasonable endeavours to give the Licensor not less that two (2) business days written notice of the disclosure.
   3. The Licensee shall ensure that its directors, employees, agents and approved sub-contractors comply with the provisions of this clause and are bound by terms and conditions of use and non-disclosure at least as onerous as those contained in this clause.
2. **Warranties**
   1. The Licensee warrants and undertakes to the Licensor that:
      1. it shall perform its obligations under this Agreement with due care, skill and diligence and in accordance with good industry practice
      2. it is at the date of this Agreement not aware of any other circumstance, financial or otherwise, which would prevent the Licensee from complying with the terms of this Agreement; and
      3. that all information supplied by the Licensee for the purposes of any audit is genuine and correct.

8.2 Each party represents, undertakes and warrants that it has the full authority, power and capacity to enter into and fully perform this Agreement, but the Licensor gives no other warranty including, without limitation, any warranty that there are no conflicting third party rights in any part of the Territory

1. **Insurance**

The Licensee shall maintain during the term of this Agreement appropriate insurance to cover general liability, professional indemnity and the Licensee’s liability in respect of any act or default for which it may become liable to indemnify the Licensor and shall on demand produce to the Licensor a copy of the policy.

**10 Third party Intellectual Property Rights**

10.1 The Licensee shall be responsible for obtaining all necessary third party clearances, consents and licences, and making all necessary payments, in relation to the use of any Intellectual Property Rights owned by anyone other than the Parties (“third party Intellectual Property Rights”) in the Licensed Product and shall provide to the Licensor, no later than 5 (five) working days following the written request of the Licensor, a written summary of all clearances, consents and licences obtained by the Licensee in respect of the Licensed Product.

10.2 The Licensee warrants that the Licensed Products do not and shall not infringe any third party Intellectual Property Rights and that all fees, royalties or commissions payable in relation to the use of third Intellectual Property Rights in Licensed Products have been or shall be paid by the Licensee.

* 1. The Licensee shall indemnify the Licensor (which expression shall in this clause 10.3 include its officers, servants, agents, assignees and any Associated Company) against all liabilities, loss, damages, costs and expenses including reasonable legal costs and attorneys’ fees, that the Licensor may directly incur as a result of any claim that the normal operation, possession or use of the Licensed Product infringes any third party Intellectual Property Rights (an “**IP Infringement**”) provided that the Licensor:
     1. gives notice to the Licensee of any IP Infringement as soon as reasonably practicable upon becoming aware of the same;
     2. gives the Licensee the sole conduct of the defence to any claim or action in respect of an IP Infringement and does not, at any time, admit liability, otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express instructions of the Licensee; and
     3. at the cost of the Licensee, acts in accordance with the reasonable instructions of the Licensee and gives to the Licensee such assistance as it shall reasonably require in respect of the conduct of the said defence including, without limitation, the filing of all statements of case and other court process and the provision of all relevant documents.

**11 Termination**

11.1 Either Party may terminate this Agreement forthwith on written notice if:

11.1.1 the other Party is in material breach of any of the terms (which shall, for the avoidance of doubt, include warranties) of this Agreement and has failed to remedy such breach (if it is capable of remedy) within 30 (thirty) days of receipt of notice of the breach or such reasonable shorter period specified in the notice;

11.1.2 an encumbrancer takes possession, or a receiver is appointed, or any of the property or assets of the other Party becomes subject to an administration order by the court, or an administrator is appointed out of court by the other Party, its directors or creditors, or the other Party makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986 or the Enterprise Act 2002 as applicable);

11.1.3 the other Party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations of that company);

11.1.4 the other Party becomes bankrupt or makes any arrangement or composition with its creditors.

11.2 The Licensor may terminate this Agreement:

11.2.1 forthwith on written notice if the Licensee is in breach of clause 3.1 or if the Licensee challenges the validity of the Trade Mark or the rights of the Licensor or any Associated Company in it; or

11.2.2 on at least 3 (three) months’ written notice.

**12 Effect of termination**

12.1 On termination of this Agreement, the Licensee shall:

## 12.1.1 (subject to clause 12.2) immediately cease to use the Trade Marks and destroy all stocks of Licensed Products in its possession;

## 12.1.2 within 30 days of termination pay the Licensor all sums due under this Agreement together with all accrued interest

12.2 If the Licensor terminates this Agreement under clause 11.2.2 above, the Licensee shall be entitled, for a reasonable period after termination agreed in writing between the parties but not exceeding six months, to use or sell any Licensed Products existing at the date of termination.

12.3 Clauses 4, 5.1, 5.2, 5.4, 5.5, 6.1, 7, 10.3, 12, 15.2, 15.7 and 15.10 shall survive the termination or expiry of this Agreement. Termination of this Agreement shall be without prejudice to the right to seek compensation for breach of any provisions of this Agreement*.*

**13 Notices**

13.1 Any notices or consents required to be given under this Agreement shall be in writing and delivered personally or by first class post or transmitted by facsimile or electronic mail to the addresses of the Parties set out in the Special Terms.

13.2 Any notice shall be deemed served (if by personal delivery) at the time of delivery, or (if by first class post) at the start of the second business day after posting; or (if by facsimile) on the day of transmission (or the next business day if transmitted outside normal working hours) provided that the sender shall have received a transmission report indicating that all pages of the notice have been transmitted to the correct facsimile number; or (if by electronic mail) on the date of delivery to a server accessible by the recipient (or the next following business day if sent outside normal working hours) and provided that the sender posts a confirmatory copy of the notice by first class post or the recipient confirms receipt by return of email within one working day of receipt.

13.3 Either Party may change the details of its address, facsimile number or electronic mail address by a notice to the other Party in the manner set out above.

**14 Assignment and sublicensing**

Neither Party shall be entitled to assign, sublicense or otherwise transfer or dispose of this Agreement or any of its rights, benefits or obligations under it in whole or in part without the prior consent of the other Party except that the Licensor shall be entitled, in its absolute discretion, to assign to any of its Associated Companies.

**15 General**

15.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and invalidates all prior oral or written communications, understandings, representations or warranties relating to the subject matter hereof (except those made fraudulently) and each Party warrants to the other that it has not relied on any such communications, understandings, representations or warranties in entering into this Agreement.

15.2 The Licensee shall, at the reasonable expense of the Licensor, do and execute or procure to be done or executed all such necessary acts, deeds, documents and things reasonably within its power to give effect to this Agreement as may be reasonably requested by the Licensor.

15.3 If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law and the Parties shall negotiate in good faith to replace any invalid or unenforceable terms with substitute provisions.

15.4 No amendment to this Agreement, whether oral or written, shall be binding on either Party unless in writing and signed by an authorised signatory of each of the Parties.

15.5 Nothing in this Agreement shall be construed as establishing or implying any partnership, joint venture, or any relationship of employment or of principal and agent, between the Parties and the Licensee shall not, without the prior consent of the Licensor, hold itself out as in any way authorised to bind the Licensor nor represent itself as an agent of the Licensor for any purpose nor pledge the credit of the Licensor nor give any condition or warranty nor make any representation on behalf of the Licensor or commit the Licensor to any contracts.

15.6 Any failure or delay on the part of either Party to exercise any power or right under this Agreement shall not operate as a waiver of it, nor shall any single or partial exercise of such rights or power preclude any other or further exercise of the right or power. Any of the rights or remedies of the Parties under this Agreement may at any time be enforced separately or concurrently with any other rights and remedies whether under this Agreement or arising by operation of law with the effect that the rights and remedies are cumulative and not exclusive of each other.

15.7 No person who is not a party to this Agreement shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms and conditions of this Agreement.

15.8 The Licensee undertakes to notify the Licensor of any change in its circumstances, including, without limitation, its name, address, contact details, bank details, VAT registration status and any change of control and any event which would give the Licensor the right to terminate this Agreement under clause 11.1.

15.9 Each individual signing this Agreement on behalf of a Party represents and warrants that they have been fully empowered by that Party to do so.

15.10 This Agreement shall be subject to the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the English courts. Notwithstanding the foregoing, the Licensor shall, if the Territory is not the United Kingdom alone, have the exclusive right to waive this provision and to sue the Licensee in any jurisdiction*.*