

TERMS AND CONDITIONS OF SALE BPEC SERVICES LIMITED AND BPEC CERTIFICATION LIMITED

These are the terms and conditions on which BPEC will do business with the customer (“You”).

Please read them carefully, particularly clause 14 (which limits BPEC’s liability).

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these conditions the following words shall have the following meanings:
- “BPEC” means BPEC Services Limited and/or BPEC Certification Limited (as appropriate);
 - “BPEC Services” means BPEC Services Limited whose registered office is at 2, Mallard Way, Pride Park, Derby DE24 8GX
 - “BPEC Certification” means BPEC Certification Limited whose registered office is at 2, Mallard Way, Pride Park, Derby DE24 8GX;
 - “Contract” means any contract between You and BPEC incorporating these conditions for the sale of Products and/or the provision of Services;
 - “Products” means any products and/or Products ordered from BPEC Services by You or to be supplied by BPEC Services to You;
 - “Services” means the provision of services to You including the issuing of certificates to individuals on the satisfactory completion of a course provided by BPEC Services;
 - “Training Centre” means a centre to which BPEC sub-contracts the provision of training courses/assessments to individuals;
 - “You, Your, Yourself” means the person whose order for Products and/or Services is accepted by BPEC.
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 Clause headings do not affect the interpretation of these conditions.

2. BASIS OF CONTRACT

- 2.1 These terms and conditions form the contract between You and BPEC to the exclusion of any other terms or conditions (including any terms or conditions which You purport to apply under any purchase order, confirmation of order, specification or other document) and shall supersede any terms and conditions previously notified to You.
- 2.2 No terms or conditions endorsed on, delivered with or contained in Your purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all BPEC sales and any variation to these conditions and any representations about the Products or the Services shall have no effect unless expressly agreed in writing and signed by the chief executive of BPEC.
- 2.4 Each order or acceptance of a quotation for Products or Services by You from BPEC shall be deemed to be an offer by You to buy Products or Services subject to these conditions.
- 2.5 BPEC reserve the right to refuse to accept any order placed by You without being required to provide reasons for such refusal.
- 2.6 You must ensure that the terms of Your order are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until BPEC despatches an acknowledgement of order to You. Any quotation is valid for a period of 30 days only from its date, provided that BPEC has not previously withdrawn it.

3. DESCRIPTION AND SPECIFICATION

- 3.1 The quantity and description of the Products or Services shall be as set out in BPEC’s quotation or, if no quotation is provided, as set out in your order.
- 3.2 Any details and/or specifications supplied by BPEC to You in company brochures are intended as a guide only and only give a general approximation of the Products and/or Services unless stated on BPEC’s quotation or agreed in writing. Such details and/or specifications shall not form part of the Contract and this is not a sale by sample.
- 3.3 BPEC reserve the right to make changes to the specification of the Products and/or Services as required from time to time by law, applicable safety requirements or manufacturing requirements.

4. DELIVERY

- 4.1 Dates for delivery and/or performance are estimates only. BPEC will use reasonable endeavours to ensure delivery and/or performance on the dates specified.
- 4.2 Where Products and/or Services are to be delivered and/or performed in instalments and/or stages, each delivery and/or stage shall constitute a separate and distinct contract and no cancellation or termination of any one Contract relating to an instalment will entitle You to repudiate or cancel any other Contract or instalment. Each separate instalment may be invoiced and paid for in accordance with the provisions of the Contract.
- 4.3 You shall have no right to reject Products and/or Services or to rescind for late delivery and/or performance unless the due date for delivery and/or performance has passed and You have served on BPEC a written notice requiring the Contract to be fulfilled, giving BPEC not less than 7 days in which to do so and the notice has not been complied with.
- 4.4 Subject to the other provisions of this Contract, BPEC will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and likely loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Products (even if caused by BPEC’s negligence).
- 4.5 Delivery of Products will usually be made between 9.00am and 5.00pm on working days by courier or by post. You procure that BPEC have a free right of access to the address for delivery for the purpose of delivering the Products. If you refuse to take delivery of any Products then:
- (a) Risk in the Products will pass to You (including for loss or damage caused by BPEC’s negligence); and
 - (b) The Products will be deemed to have been delivered; and
 - (c) BPEC may store the Products until delivery whereupon You will be liable for all related costs and expenses (including, without limitation, storage and insurance); and
 - (d) BPEC shall be entitled to withhold delivery and/or performance of any other Products and/or Services and to treat this Contract as repudiated by You and shall have the right to rescind this Contract.

5. NON-DELIVERY OF PRODUCTS

- 5.1 The quantity of any consignment of Products as recorded by BPEC upon despatch from BPEC’s place of business shall be conclusive evidence of the quantity received by You on delivery unless You can provide conclusive evidence proving the contrary.
- 5.2 BPEC shall not be liable for any non-delivery of Products (even if caused by BPEC’s negligence) unless You give written notice to BPEC of the non-delivery within 7 days of the date when the Products would in the ordinary course of events have been received.
- 5.3 Any liability of BPEC for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.

6. PRICE AND PAYMENT

- 6.1 The price of the Products and/or the Services is as shown in BPEC’s price list current at the date of the acceptance of the order. BPEC may increase the price of the Products and/or Services by giving written notice to You at any time. Such price increase shall come into effect on the date specified in such notice.
- 6.2 The price of the Products and/or the Services shall be exclusive of any value added tax but inclusive of packaging, carriage and insurance costs.
- 6.3 BPEC’s terms of payment are net cash within 30 days of date on invoice. Time for payment shall be of the essence. No payment shall be deemed to have been received unless BPEC has received cleared funds.
- 6.4 If You fail to pay any invoice by the due date, BPEC shall be entitled, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 up dated 2002, as its option:-
- (a) to put the account on stop for supply of Products and/or Services; and
 - (b) to charge You interest on the outstanding sum from the due date until payment is actually received by BPEC in full together with interest at the rate of 8% above the base rate from time to time of Bank of England accruing on a daily basis until payment is made, whether before or after any judgment.
- 6.5 You shall pay all sums due to BPEC under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies unless You have a valid court order requiring an amount equal to such deduction to be paid by BPEC to You.

7. CREDIT LIMIT

- 7.1 BPEC may set a credit limit for You. BPEC reserve the right to refuse to accept orders for Products and/or Services and/or to suspend or withhold delivery of Products and/or the performance of the Services if such Products and/or Services would result in You exceeding Your credit limit or if the credit limit is already exceeded.

8. PROVISION OF THE CERTIFICATION SERVICES

- 8.1 BPEC provides certain courses and its Products include training manuals for the use of persons undertaking such courses (“Trainees”). On successful completion of the training course the Training Centre must submit a form to BPEC Certification Ltd requesting a certificate to be issued to the Trainee. In most cases training manuals for such courses are sold with a validation label which the Training Centre must affix to the form submitted to BPEC Certification to request the issue of a certificate for the Trainee.
- 8.2 The cost of provision of the certificate to the Trainee is included in the cost of Products and shall be paid in accordance with clause 6.
- 8.3 BPEC Certification will use reasonable endeavours to ensure that certificates are issued to Trainees within 20 working days of receipt of the completed form from the Training Centre.
- 8.4 BPEC Certification will send the certificate by second class post to the postal address for the Trainee set out in the completed form. If the certificate is not received by the Trainee because it is lost in the post then the Trainee must notify BPEC Certification in writing within 45 days of the date when the certificate would normally have been received. On receipt of such notice BPEC Certification will reissue the certificate without charge within a reasonable period of time.
- 8.5 If the certificate issued to the Trainee is incorrect because the details set out on the form submitted by the Training Centre are incorrect then BPEC Certification will charge the Trainee for the cost of reissuing the certificate and clauses 13.6 and 13.7 shall not apply. If the Trainee requires a duplicate certificate to be issued then BPEC Certification will charge the Trainee for the cost of reissuing the certificate.

9. CANCELLATION OF SERVICES

- 9.1 You may cancel orders for Services if BPEC receive Your notice of cancellation at any time up to 7 days before the due date for performance and You will receive a full refund of any fees paid by You subject to the deduction of BPEC’s standard administration charge from time to time in force.
- 9.2 If You cancel an order for Services 7 days or less before the due date for performance You will not receive a refund, but after the deduction of BPEC’s standard administration charge from time to time in force the fees paid by You will be held by BPEC as a credit on account of any future orders for Products and/or Services placed by You.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All intellectual property rights including but not limited to copyright, trademarks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created in the Products and/or arising from the Services shall be owned by BPEC.

11. RISK AND OWNERSHIP

- 11.1 The Products are at Your risk from the time of delivery.
- 11.2 Ownership of the Products shall not pass to You until BPEC have received in full (in cash or cleared funds) all sums due to BPEC in respect of:
- (a) the Products; and
 - (b) all other sums which are or which become due to BPEC from You on any account.
- 11.3 Until ownership of the Products has passed to You, You shall:
- (a) hold the Products for the benefit of BPEC as BPEC’s agent with an obligation on you to look after them;

- (b) store the Products (at no cost to BPEC) separately from all other Products of BPEC or any third party in such a way that they remain readily identifiable as BPEC’s property;

- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
- (d) maintain the Products in satisfactory condition and keep them insured on BPEC’s behalf for their full price against all risks to BPEC’s reasonable satisfaction. On request You shall produce the policy of insurance to BPEC.

11.4 You may resell the Products before ownership has passed to You solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of Your business at full market value; and
- (b) any such sale shall be a sale of BPEC’s property on Your own behalf and You shall deal as principal when making such a sale.

11.5 Your right to possession of the Products shall terminate immediately if:

- (a) You have a bankruptcy order made against You or You make an arrangement or composition with Your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) You convene a meeting of creditors (whether formal or informal), or You enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or You have a receiver and/or manager, administrator or administrative receiver appointed of You undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of You or notice of intention to appoint an administrator is given by You or Your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of You or for the granting of an administration order in respect of You, or any proceedings are commenced relating to the insolvency or possible insolvency of You; or
- (b) You suffer or allow any execution, whether legal or equitable, to be levied on Your property or obtained against You, or You fail to observe or perform any of Your obligations under the Contract or any other contract between BPEC and You, or are unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986 or You cease to trade; or
- (c) You encumber or in any way change any of the Products.

11.6 BPEC shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from BPEC.

11.7 You grant BPEC, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where Your right to possession has terminated, to recover them.

11.8 Where BPEC are unable to determine whether any Products are the Products in respect of which Your right to possession has terminated, You shall be deemed to have sold all Products of the kind sold by BPEC to You in the order in which they were invoiced to You.

11.9 On termination of the Contract, howsoever caused, BPEC’s (but not your) rights contained in this clause 11 shall remain in effect.

12. DEFAULT

- 12.1 If You fail to make any payment to BPEC when due; breach the terms of this Contract (and where the breach is capable of remedy have not remedied the breach within 14 days of receiving notice requiring the breach to be remedied); persistently breach the terms of this Contract; or any of the events set out in sub-clauses (a) to (c) of clause 11.5 above occur; then:
- (a) BPEC may withhold delivery of any undelivered Products and stop any Products in transit;
 - (b) BPEC may withhold the performance of any Services and cease any Services in progress;
 - (c) BPEC may cancel, terminate and/or suspend without liability to You this Contract or any other agreement with You; and/or
 - (d) All monies owed by You to BPEC shall forthwith become due and payable.

13. GUARANTEE

- 13.1 BPEC guarantee that the Products will be free from defects in materials and/or workmanship for a period of 6 months from the date of delivery of the Products to You (“the Product Guarantee”).
- 13.2 The Product Guarantee does not apply in respect of any faults or defects caused by wilful damage, failure to follow BPEC’s instructions, misuse, alteration or repair of Products without BPEC’s approval, improper maintenance or negligence on Your part or on the part of a third party.
- 13.3 BPEC shall have no liability to You under the Product Guarantee unless any defect is notified to BPEC within 7 working days of the defect becoming apparent or suspected, or when it should reasonably have become apparent to or suspected by You.
- 13.4 Subject to the provisions of clauses 13.2 and 13.3, if the Products do not conform with the Product Guarantee BPEC will at BPEC’s option either refund the price or replace free of charge the Products. If BPEC complies with this clause it shall have no further liability under the Product Guarantee.
- 13.5 Any defective Products must be returned to BPEC for inspection if requested by BPEC before BPEC will have any liability for defective Products. If the Products prove to be defective, BPEC may at BPEC’s sole discretion reimburse You for the cost of returning the defective Products.
- 13.6 BPEC guarantee that the Services will be free from defects apparent on inspection for a period of 7 days from the date of performance of the Services, provided that the defect is notified to BPEC within 7 working days of performance of the Services (“the Services Guarantee”).
- 13.7 Subject to the provisions of clause 13.6, if the Services do not conform with the Services Guarantee BPEC will at BPEC’s option re-perform the defective Services. If BPEC complies with this clause it shall have no further liability under the Services Guarantee.
- 13.8 BPEC may at BPEC’s sole discretion replace the Products or refund the price of defective Products or re-perform the defective Services which are not notified to BPEC within the time limits specified in clauses 13.3 or 13.6 (as applicable), where in BPEC’s opinion the defect would not have been ascertainable on inspection and has been notified to BPEC as soon as reasonably practicable.

13.9 Neither the Product Guarantee nor the Services Guarantee will apply if You have not paid for the Products or Services in full on the due date.

14. LIMITATION OF LIABILITY

- 14.1 Subject to clause 4, clause 5 and clause 13, the following provisions set out the entire financial liability of BPEC (including any liability for the acts or omissions of BPEC’s employees, agents and sub-contractors) to You in respect of:
- (a) any breach of this Contract;
 - (b) any use made or resale by You of any of the Goods, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 14.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 14.3 Nothing in these conditions excludes or limits BPEC’s liability:
- (a) for death or personal injury caused by BPEC’s negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for BPEC to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 14.4 Subject to clause 14.2 and clause 14.3:
- (a) BPEC’s total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price of the Products and/or Services that are the subject of your claim, plus damages limited to 50% of the same amount for any additional costs directly, reasonably and necessarily incurred by You in obtaining alternative products and/or services; and
 - (b) BPEC shall not be liable to You for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

15. ASSIGNMENT

- 15.1 BPEC may assign the Contract or any part of it to any person, firm or company.
- 15.2 You shall not be entitled to assign the Contract or any part of it without BPEC’s prior written consent.

16. FORCE MAJEURE

- BPEC reserve the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by You (without liability to You) if BPEC are prevented from or delayed in the carrying on of BPEC’s business due to circumstances beyond BPEC’s reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, You shall be entitled to give notice in writing to BPEC to terminate the Contract.

17. GENERAL

- 17.1 Each of BPEC’s rights or remedies under the Contract is without prejudice to any other right or remedy of BPEC whether under the Contract or not.
- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 17.3 Our failure or delay in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 17.4 Any waiver by BPEC of any breach of, or any default under, any provision of the Contract by You shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 17.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 17.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

18. COMMUNICATIONS

- 18.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- (a) (in case of communications to BPEC) to BPEC’s registered office or such changed address as shall be notified to You by BPEC; or
 - (b) (in the case of the communications to You) to the address as set out in any document which forms part of the Contract or such other address as shall be notified to BPEC by You.
- 18.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (b) if delivered by hand, on the day of delivery; or
 - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or
 - (d) if sent by email, at the time of transmission and otherwise on the next working day.