

TERMS & CONDITIONS FOR THE SUPPLY OF TRAINING COURSES BY DE SMIT MEDICAL SYSTEMS LIMITED

In these Terms and Conditions, the following expressions shall have the following meanings:-

“Classroom Course” means a course where the Training Services are provided in a classroom setting to which a delegate attends in person;

“Contract” means a contract between de Smit and You for the supply Training Services in accordance with these Terms and Conditions;

“de Smit” means de Smit Medical Systems Limited (Company Number 06585345) whose registered office is at 584 Wellsway, Bath, BA2 2UE (Telephone: +44 0845 345 4226 /Email: sales@desmitmedical.com)

“booking” means a booking for a training course whether booked online on the Website or on a booking form in each case as confirmed by de Smit;

“course fee” means the fee payable for each training course

“delegate” means You or an individual booked on a training course by You;

“Online Course” means an online course delivered by de Smit pursuant to which Training Services are provided remotely;

“Terms and Conditions” means the terms and conditions set out in this document as varied from time to time in accordance with Condition 2.3;

“Training Centre” means de Smit’s premises at Bristol Road, Cromhall, South Gloucestershire, GL12 8AX;

“training course” means an Online Course or a Classroom Course

“Training Services” means the provision of training courses (whether at the Training Centre, at a venue provided by you or online) by de Smit;

“Training Site” means the Training Centre or the venue provided by You; “You” or “Your” means the individual or organisation who buys or agrees to purchase the Training Services from de Smit.

The words "writing" or "written" in these Terms and Conditions include emails but not faxes. Emails shall be sent to you by de Smit using the email address provided by You in your booking form (or such other email address as You may notify de Smit in writing for that purpose).

1. General

- 1.1. These Terms and Conditions shall apply to all contracts for the provision of Training Services by de Smit to You and shall prevail over any other documentation or communication from You and You waive any right You might otherwise have to rely on any term endorsed upon, delivered with or contained in any of Your documents that is inconsistent with these Terms and Conditions. They also apply to the Contract to the exclusion of any other terms which are implied by law, trade custom, practice or course of dealing.
- 1.2. No variation of these Terms and Conditions shall be binding unless agreed in writing by de Smit.
- 1.3. These Terms and Conditions are correct at the date shown on the relevant course booking documentation. de Smit reserves the right to vary these Terms and Conditions or the training courses without notice to reflect changes in relevant laws and regulatory requirements or to implement minor technical adjustments and improvements. If de Smit needs to make significant changes to a training course or these Terms and Conditions, de Smit will notify You and You may then contact de Smit to transfer the booking to another Delegate at no cost or to transfer the booking to another course. An updated copy of the Terms and Conditions will be supplied to You if applicable or on request.
- 1.4. It is Your responsibility to ensure that the training course is appropriate for Your requirements and the requirements of any of your delegates.

2. Contract Formation

- 2.1. When You place an order for Training Services (whether online, by telephone, on a booking form or by Your purchase order) You are offering to purchase the Training Services on these Terms and Conditions.
- 2.2. The Contract between de Smit and You will come into force when de Smit accepts Your booking by emailing You with a booking confirmation (which in the case of a booking for an Online Course will provide you with a link to access the Online Course, along with log on details (if applicable)). Until such booking confirmation has been sent de Smit reserves the right to cancel or decline your booking or any part of your booking at any time (and will return any payment that you have already made in respect of that booking).
- 2.3. Where your booking consists of multiple Online Courses or multiple Classroom Courses, each individual course will be treated by de Smit as a separate offer to purchase. Acceptance of Your offer to buy one or more courses will not be acceptance by de Smit of Your offer to purchase any other courses which make up Your order.
- 2.4. If de Smit is unable to accept Your booking (for example because the training course is fully booked, because of unexpected limits on resources which could not reasonably be foreseen or because de Smit have identified an error in the price or description of the training course) de Smit will inform you of this and will not charge You for the training course.
- 2.5. You may at de Smit's discretion transfer a booking on a training course to another individual provided that you notify de Smit of the requested change no later than 7 working days prior to the date of the training course. A transfer will not be completed until the individual to whom the booking is transferred has received an email from de Smit confirming the booking.
- 2.6. You may at de Smit's discretion transfer the booking from one training course to an alternative available training course subject to a fee (unless the transfer is made pursuant to Condition 2.7 in which case no fee is payable) as shown below:-

More than 4 weeks before the training course is due to commence: 10% of course fee

Between 2-4 weeks before the training course is due to commence: 30% of course fee

Less than 2 weeks before the training course is due to commence: 40% of course fee

In particular, but without limit, de Smit shall be under no obligation to allow a transfer if that would result in the number of attendees at a training course being fewer than is, in de Smit's discretion, a viable minimum number. A transfer will not be completed until You have received an email from de Smit confirming the booking for the alternative training course.

- 2.7. In the unlikely event of a training course being cancelled or postponed by de Smit, de Smit will liaise with You and use reasonable endeavours to agree with you a suitable alternative training course to which Your booking can be transferred. You will be entitled to a full refund of the course fee paid if a transfer of the booking is not reasonably acceptable to You.

3. Training Course Requirements

- 3.1. All delegates must provide, unless previously agreed by de Smit, such equipment as de Smit notifies them will be required. de Smit will not be responsible if a delegate is unable to participate in whole or in part in any training course because of any failure by a delegate to provide such equipment.
- 3.2. It is Your responsibility to ensure that You or any of Your Delegates must be physically capable of undertaking the training course. It is also Your responsibility to notify de Smit at least 7 working days prior to the training course details of any reasonable assistance or adjustments that a delegate is likely

to need during the training course and de Smit will take reasonable steps to provide or make such assistance or adjustment. If You do not provide such details or they are incorrect or incomplete de Smit may end the Contract in relation to the booking for that Delegate (and de Smit shall not be obliged to make any refund of any charges paid by You in respect of that booking) or make an additional charge of a reasonable sum to compensate de Smit for any extra work that is required as a result

- 3.3. Equipment owned by de Smit must not be removed from the Training Site. Any damage to Company equipment or property caused by You or Your delegates will be invoiced to You.
- 3.4. Delegates are required to be punctual at all courses and at all sessions. Delegates must attend and complete all aspects of the training course in order to qualify for certification. There will be no reimbursement of any of the cost of a training course if a Delegate arrives late or is absent from all or part of the training course. De Smit reserves the right to refuse admittance due to lateness.
- 3.5. de Smit reserves the right to refuse to allow a Delegate to participate, or continue to participate, in a training course if they:
 - 3.5.1. give cause for concern that their continued participation may cause offence or injury to themselves or other participants;
 - 3.5.2. do not arrive in time for the training course or any part of it;
 - 3.5.3. are deemed by de Smit (acting reasonably) to behave inappropriately;
 - 3.5.4. are, in de Smit's reasonable opinion, under the influence of drugs (other than prescribed drugs the nature and any side effects of which have been notified in advance to de Smit so that de Smit may then seek assurance that training can be carried out without risk and in that case the decision of de Smit is final) and/or alcohol;
 - 3.5.5. are not dressed appropriately or do not have the appropriate equipment throughout the course;
 - 3.5.6. do not meet the minimum age requirement for the training course or do not meet any required qualification criteria for the training course as may be notified by de Smit prior to accepting any booking;
 - 3.5.7. or are otherwise in breach of any health and safety policy or procedure of de Smit of which the Delegate has been notified prior to the commencement of the training course.

If a Delegate is removed from or denied access to a training course in accordance with Condition 3.5 de Smit shall be entitled to terminate the Contract for that booking and de Smit shall not be obliged to make any refund of any charges paid by You in respect of that booking but shall be entitled to recover from you any unpaid charges that were otherwise payable in respect of that booking.

- 3.6. Where a Classroom Course is carried out not at the Training Centre the following provisions apply:-
 - 3.6.1. all relevant public liability and other insurances must be provided for by the site owner and/or You and de Smit does not accept any liability in this regard.
 - 3.6.2. You must ensure that the venue has adequate room (including with enough space to seat all the attendees in accordance with prevailing health and safety and government requirements) and facilities in which to carry out safely both practical and theoretical elements of the training. If in the reasonable opinion of the de Smit representative who is presenting the training course You have not complied with this Condition de Smit reserves the right to cancel the training course without liability to You and in such circumstances de Smit shall not be obliged to make any refund

of any charges paid by You in respect of that booking. To the extent You have not at the time of such cancellation paid for the training course de Smit shall, notwithstanding the cancellation, be entitled to recover from you the full balance of the charges that would otherwise have been payable. In view of the costs and expenses incurred by de Smit and the infeasibility of de Smit being able to mitigate its loss at this point, the amount payable by You in these circumstances is a reasonable pre-estimate of the loss and damage that de Smit would incur.

3.7. The following provisions apply in relation to Online Courses:-

3.7.1.the receipt of an Online Course is personal to the person named on the booking and unless otherwise agreed by de Smit, who must not share or transfer their rights to access the Online Course or provide an Online Course to any other person;

3.7.2.the Delegate may incur (and will be responsible for) charges to their internet service provider while accessing and/or downloading the Online Course or any training materials. It is the Delegate’s responsibility to ensure that they have appropriate and adequate hardware, internet service and necessary software to allow them to access the Online Course; and

3.7.3.de Smit cannot be held responsible for any delay or disruptions to a Delegate’s access to an Online Course as a result of such suspension or any of the following:

- a) the operation of the internet and the world wide web, including but not limited to viruses;
- b) any firewall restrictions that have been placed on a Delegate’s network or the computer they are using to access the Online Course;
- c) failures of telecommunications links and equipment; or
- d) operating system, anti-virus and/or web browser compatibility or configuration issues.

4. Price and Payment

4.1. Unless otherwise stated, all prices are exclusive of VAT which will be charged at the rate current at the time of due payment.

4.2. You must pay the full price of a training course when booking online through de Smit’s website. In all other cases payment will be due as notified to You by de Smit when you place your order and as set out in the booking confirmation. If you require an invoice in order to make payment, You must provide de Smit with a valid purchase order number and the invoice will be payable within 30 days from the date of the invoice.

4.3. If You fail to make a payment due to de Smit under the Contract by the due date, then, without limiting de Smit’s other remedies under these Conditions, You shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Condition will accrue each day at 5% a year above the Bank of England's base rate from time to time, but at 5% a year for any period when that base rate is below 0%.

4.4. de Smit also reserves the right to apply an administration charge if an invoice is not paid within 30 days of its due date as follows:-

Amount of debt	Administration Charge
Up to £999.99	£40
£1,000 to £9,999.99	£70
£10,000 or more	£100

4.5. All amounts due under the Contract 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. Cancellation and Postponement

5.1. De Smit reserves the right in its absolute discretion to cancel a training course. If de Smit has complied with Condition 1.3 de Smit shall have no further liability to you.

5.2. de Smit reserves the right to charge a cancellation/postponement fee in respect of contracts that are cancelled or postponed by You (save as otherwise set out in these Terms and Conditions) as de Smit will at the point of cancellation have incurred costs and expenses in relation to the course. The following refunds will be made in the event of cancellations/postponements prior to course start date:

More than 28 Days – full refund

15 – 27 Days – 50% refund

0-14 Days – no refund.

5.3. You must notify any cancellation in writing to de Smit sent to sales@desmitmedical.com.

5.4. All complaints and claims relating to Contracts with de Smit must be received in writing to sales@desmitmedical.com as soon as reasonably practicable and in any event within 14 days of the date of the relevant training course. de Smit will respond to all complaints within 30 days of their receipt.

6. Liability

6.1. Nothing in these terms shall limit or exclude de Smit's liability for:

6.1.1. death or personal injury caused by de Smit's negligence, or the negligence of de Smit's employees, agents or subcontractors (as applicable);

6.1.2. fraud or fraudulent misrepresentation;

6.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or

6.1.4. any matter in respect of which it would be unlawful for de Smit to exclude or restrict liability.

6.2. Except to the extent expressly stated in these Terms and Conditions all terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are excluded.

6.3. Subject to Condition 6.1:

6.3.1. de Smit shall not be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any direct, indirect or consequential loss arising under or in connection with any Contract; and

6.3.2. de Smit's total aggregate liability to You for all other losses arising under or in connection with any booking, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to 100% of the total sums paid by You for training courses under such booking.

7. de Smit as Processor of Personal Data

You are the Data Controller in relation to the personal data which You provide to us. De Smit uses this to take any booking by You and to send Delegates their joining instructions, and to provide them with the training and issue their certificates. De Smit will only use the personal data for this purpose or in accordance with Your instructions as Data Controller, unless otherwise required by law, in which case De Smit will notify You, unless prohibited from doing so by law.

For complete details of De Smit's collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of data subject's rights and how to exercise them, and personal data sharing (where applicable), please refer to De Smit's Privacy policy which is freely available here [*insert link to Privacy Policy*]. A copy will be emailed to you at your request.

The following specific provisions also apply:-

Some courses may require delegates to provide proof of ID.

If You provide De Smit with information about making the course accessible to Your Delegates De Smit will only use it for that purpose.

If the course is externally accredited De Smit will provide the Delegate's name, contact details and course outcome to the awarding body. The awarding body becomes the Data Controller for that information.

De Smit may send emails to You about refresher training, and when certificates are due to expire. Please let De Smit know if you do not want to receive this reminder by phoning De Smit +44 0845 345 4226 or by emailing to sales@desmitmedical.com.

At the end of a training course De Smit may ask delegates if De Smit can continue to keep in touch with them by email about future training courses. De Smit becomes the Data Controller for that personal data.

8. Intellectual Property Rights

8.1. Materials distributed during a training course may be taken away by Delegates. All intellectual property rights of whatever nature in any such materials and in the speeches made by the person(s) presenting the training courses are and shall remain owned by de Smit (or by de Smit's licensor).

8.2. Participation in a training course does not confer any intellectual property rights (by implication or otherwise) on a Delegate to use, alter, copy or otherwise deal with any of the intellectual property in the materials referred to in Condition 8.1.

8.3. Delegates are not authorised to and must not without prior written permission from de Smit record on video or audio tape, relay by videophone or other means all or any part of an Online Course.

9. Force Majeure

de Smit shall not be in breach of the Contract nor liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to epidemic or pandemic.

10. Assignment and other dealings

- 10.1. de Smit may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 10.2. You may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of Your rights or obligations under the Contract without de Smit's prior written consent.

11. Severance

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason such provision shall be severed but the remainder of the provisions of the Contract shall continue in full force, validity and effect. If any provision of the Contract is deemed deleted under this Condition 11 You and de Smit 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.

12. Governing Law and Jurisdiction

The Contract 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 the law of England and You and de Smit hereby submit to the exclusive jurisdiction of the English courts to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

13. Entire Agreement

These Terms and Conditions set out the whole of the Agreement relating to the supply of Training Services to You by de Smit. Nothing said by any person on de Smit's behalf should be understood as a variation of these Terms and Conditions or as an authorised representation about the nature or quality of any Training Services offered by de Smit. Save for fraud or fraudulent misrepresentation, de Smit shall have no liability for any such representation being untrue or misleading.

14. Third Party Rights

Except for de Smit's directors, employees or representatives, a person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party that exists or is available apart from that Act.