

CMS Vocational Training Limited – Terms & Conditions of Trade

1. Definitions

- 1.1 "AAT" shall mean the Association of Accounting Technicians whose registered office is at 140 Aldersgate Street, London EC1A 4HY
- 1.2 "AAT Accountancy Learner" shall mean the individual currently enrolled or applying for enrolment with CMS on an AAT Course, and may also be the same person or entity as the Client, an employee of, associate of, or colleague of the Client, or a third party
- 1.3 "AAT Course" shall mean a course approved by the Association of Accounting Technicians which is provided and delivered by CMS to AAT Accountancy Learners
- 1.4 "AAT Student Membership Fees" shall mean the AAT published fees payable for admission as a student member of the AAT as revised from time to time.
- 1.5 "AAT Resit Fee" shall mean the AAT published fees applicable to AAT Course exam resits as revised from time to time which shall be payable at the same time as the Resit Fee and Invigilation Fee, subject to clause 5 of these terms.
- 1.6 "Advanced Learner Loan" shall mean a government student finance loan administered by the SLC which is drawn down either by WYLP or CMS and paid to CMS on behalf of a Learner to assist with payment of a Fee.
- 1.7 "CMS" shall mean CMS Vocational Training Limited (company number 4108137), which also trades as "CMS Fitness Courses", and having its registered office at Parr House, 26 Station Road, Batley, West Yorkshire WF17 5SU, its successors and assigns or any person acting on behalf of and with the authority of CMS Vocational Training Limited.
- 1.8 "H&F Resit Fee" shall mean the fee of £15 (including VAT) payable by a Health & Fitness Learner to CMS for each multiple choice examination re-sit, subject to clause 5 of these terms.
- 1.9 "Client" shall mean the person or entity described as such on the applications, booking form, client information form, quotation, enrolment form, invoices, or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
- 1.10 "Course" shall mean any course provided by CMS to the Client (and, where the context so permits, shall include any supply of Course Materials), as described on the applications, booking form, enrolment forms, invoices or any other forms as provided by CMS to the Client, and shall include any training, coaching, advice or recommendations.
- 1.11 "Course Materials" shall mean all course materials supplied by CMS to the Client and includes any training or coaching (and, where the context so permits, shall include any provision of the Course as defined above).
- 1.12 "Fee" shall mean the cost of the Course as agreed between CMS and the Client subject to clause 5 of these terms.
- 1.13 "Health & Fitness Learner" shall mean the individual currently enrolled or applying for enrolment with CMS on either an Instructing Exercise & Fitness, Personal Training course or on any other health and fitness course provided by CMS from time to time, and may also be the same person or entity as the Client, an employee of, associate of, or colleague of the Client, or a third party
- 1.14 "Invigilation Fee" shall mean fee of £25.00 (including VAT) per exam payable by an AAT Accountancy Learner to CMS for the provision of exam invigilation services, which shall be payable at the same time as the AAT Resit Fee, subject to clause 5 of these terms.
- 1.15 "Learner" shall mean the individual currently enrolled or applying for enrolment with CMS, and may also be the same person or entity as the Client, an employee of, associate of, or colleague of the Client, or a third party and shall include Health and Fitness Learners and AAT Accountancy Learners.
- 1.16 "SLC" shall mean the Student Loans Company whom administer further education support and learner loans for eligible applicants and whose registered office is at 100 Bothwell Street, Glasgow, G2 7JD.
- 1.17 "WYLP" shall mean West Yorkshire Learning Providers of which CMS is a network member and whose registered is at Office 26, Bradford Chamber Business Park, New Lane, Bradford B4 8BX
- "Workshop" shall mean tutor-led training delivered on a one-to-one basis, or in a group format and shall be either face to face, or by telephone or online.

2. Application of these terms and conditions to consumers

- 2.1 Where the Client purchases a Course as a consumer (as opposed to as a business) these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 2.2 We intend to rely upon the written terms and conditions set out here. If you require any changes, please make sure you ask for these to be put in writing. In that way, we can avoid any problems surrounding what we and you are expected to do.
- 2.3 Please read these terms and conditions carefully. These terms and conditions tell you who we are, how we will deliver the Course to you, how you and we may change or end any contract to which these terms and conditions apply, what to do if there is problem and other important information. If you think that there is a mistake in these terms, please contact us to discuss.

3. Acceptance

- 3.1 Any instructions received by CMS from the Client or booking made by the Client for the supply of a Course and/or the Client's acceptance of a Course provided by CMS shall constitute the Client's acceptance of the terms and conditions contained herein. A contract will only come into existence between us when CMS issues a written acceptance of the Client's booking.
- 3.2 These terms and conditions applicable to the delivery of a Course can only be amended with the written consent of CMS.
- 3.3 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Fee.
- 3.4 The Client undertakes to give CMS at least fourteen (14) days' notice of any change in the Client's name, address and/or any other change in the Client's details.

4. Client Acknowledgement

- 4.1 The Client acknowledges and agrees that:
- (a) all enrolment details as required by CMS will be provided by the Client and returned to CMS prior to Course commencement;
- (b) many Courses require pre-existing qualifications and such pre-requisites for any Course are listed on the CMS website for any particular Course. It shall be the Learner's responsibility to ensure any required prior qualifications are held before purchasing a Course and the Learner should check the validity of prior qualifications with CMS prior to purchase if in doubt. CMS will require evidence of such qualifications before issuing the Course completion certificate and shall not be liable if any prior qualification is not suitable or valid;
- (c) all attendance and assessment requirements must be completed in order for the Learner to be eligible for issuance of relevant awards and qualifications;
- (d) some Courses may be strenuous and it is the responsibility of the Client and, if different, the Learner to ensure they have the appropriate level of fitness and, if necessary, medical clearance to take part in the Course;
- (e) Fees are non-refundable once the Course is confirmed or Course Materials have been dispatched, whichever is the earlier;
- (f) CMS shall be permitted to engage third parties for the delivery of Courses;
- (g) CMS shall not be liable for changes in personal circumstances that prevent the Learner from attending / completing the Course;
- (h) in the event that a Course involving a Workshop is postponed or changed by CMS, the Client and/or Learner will be given the option to transfer to an alternative Course;
- (i) in the event of non-attendance or non-completion of a Course by the enrolled Learner, the Course place is not transferable to any replacement learner; and
- (j) to the fullest extent permissible by law, CMS shall not be held liable to any person or business (including the Client) for loss or damage suffered due to any unauthorised actions on the part of CMS's employees or partners.

5. Fee and Payment

- 5.1 At CMS's sole discretion the Fee shall be either:
- (a) as indicated on invoices provided by CMS to the Client in respect of the Course; or
- (b) CMS's quoted Fee (subject to clause 5.2) which, except in the event of manifest error, shall be binding upon CMS provided that the Client shall accept CMS's quotation in writing within thirty (30) days; or
- (c) CMS's current Fee, as at the date of enrolment, according to CMS's current price list.
- 5.2 CMS reserves the right to vary the Fee at any time. All Courses and timetables are subject to change without prior notice.
- 5.3 CMS will pay one year's AAT Student Membership Fees per AAT Course and will pay AAT Student Membership Fees for an additional year where two or more AAT Courses are purchased at the same time. The AAT Accountancy Learner shall pay any additional AAT Student Membership Fees which may apply from time to time.
- 5.4 For any Course where the Fee is less than £300.00, the Fee must be paid in full at the time of Course booking or enrolment.
- 5.5 Where the Fee is £300.00 or more, a non-refundable deposit of part of the Fee must be paid at the time of Course booking or enrolment. The Client will be informed of the amount when booking.
- 5.6 Where a Client has been pre-approved by CMS, CMS may accept instalment payments in accordance with CMS's payment schedule.
- 5.7 Where permitted by CMS, any remaining balance must be paid within 9 months of a Course start date and in accordance with an agreed payment schedule.
- 5.8 Time for payment shall be of the essence and the time for payment will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice, or prior to the commencement of the Course, exam re-sit or course reassessment (whichever happens first).
- 5.9 A Course completion certificate will not be issued until the full Course Fees (including any applicable H&F Resit Fee, AAT Resit Fee and Invigilation Fee) have been paid, such payment being in accordance with clauses 5.9 and 5.10.

5.10 Payment may be made by cash, cheque, direct bank transfer (BACS), debit / credit card or by any other method as otherwise agreed between the Client and CMS. Agreed instalment payments must be automated through CMS's EPQD / e-commerce system.

- 5.11 Receipt by CMS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised. Until then CMS's rights in respect of this agreement or regarding the ownership of Course Materials shall continue.
- 5.12 VAT and other taxes and duties that may be applicable shall be added to the Fee except when they are expressly included in the Fee.
- 5.12 The Client shall not be entitled to set off against or deduct from the Fee any sums owed or claimed to be owed to the Client by CMS.
- 5.13 Subject always to the SLC's terms for repayment of the Advanced Learner Loan (which were provided to the Client at the time of application for the Advanced Learner Loan), the Client acknowledges that where payment of a Learner's Course Fee has been made by way of an Advanced Learner Loan, the Client will be liable to repay such Advanced Learner Loan in full to CMS in the event the Learner does not complete a Course.

6. Delivery of the Course and the Course Materials

- 6.1 Delivery of the Course Materials shall take place when the Client takes possession of the Course Materials at CMS's address, the Client's address, another address nominated by the Client or CMS, or when the Course Materials have been accessed by the Client.
- 6.2 Where the Course includes on-line learning, delivery of the Course shall commence as soon the Client accesses the on-line services.
- 6.3 Where the Course involves Workshop learning, delivery of the Course may take place at CMS's address, the Client's address or at a third party location as agreed in advance between the Client and CMS.
- 6.4 Where the Learner is enrolled in a Workshop Course at any location, the delivery and assessment of the Course must incorporate the relevant occupational health and safety legislation and requirements, as they apply to work practices. Any action by the Learner that jeopardises the health, safety or welfare of others may, at CMS's sole discretion, result in the Learner being expelled from the Course with no refund of any Fees whatsoever.
- 6.5 At CMS's sole discretion, Workshop Course delivery costs, including but not limited to, cost of venue hire, tutor travel costs, tutor accommodation cost and Learner refreshment costs may be in addition to the Fee.
- 6.6 CMS may deliver the Course by separate instalments.
- 6.7 The failure of CMS to deliver any part of the Course shall not entitle either party to treat this contract as repudiated.
- 6.8 CMS shall not be liable for any loss or damage whatsoever due to failure by CMS to deliver the Course (or any part of them) promptly or at all where due to circumstances beyond the control of CMS.
- 6.9 Copyright (and any other intellectual property rights) in the Course Materials shall remain vested in CMS (or any associated partners) and are only to be used by the Client / Learner for the purpose of completing the Course. The Client and Learner agree that they shall not in any way sell, reproduce, adapt, distribute, transmit, publish or create derivative works from any part of the Course Materials.

7. Course Attendance

- 7.1 Where the Learner is enrolled in a Workshop Course, attendance of all scheduled sessions is required to complete the Course. In the event the Learner falls ill or cannot attend for any unforeseen reason, they must confer with the trainer of the Course to ascertain if and how the Course requirements can be completed. In such event, the decision of the trainer of the Course is final and it shall be the Learner's responsibility to fully comply with any stated requirements.
- 7.2 Where the Learner is studying as part of a distance learning program, they are required to maintain regular contact for support and progress assessment.

8. Assessments

- 8.1 Where appropriate, the Learner may be given feedback on submitted assessments. Neither CMS nor any trainer is under a duty to copy and/or return any assessment to the Learner, and it shall be the responsibility of the Learner to keep record of submitted assessments.

9. Disciplinary Procedures

- 9.1 If the Learner is found to be cheating (whether by collusion, plagiarism or otherwise), harassing other Learners or staff, or breaking the law in any other way, they will face disciplinary action. This may involve the expulsion of the Learner from the Course immediately, without refund of Fees, and in some cases may involve a report to the relevant authorities.

10. Complaints and Grievance Procedure

- 10.1 CMS is committed to the early resolution of complaints and grievances. In the event that the Client wishes to complain, they may do so by contacting CMS by email to info@cmsvoc.co.uk or in writing to the address referred to in clause 1.1 (within five (5) days of delivery of the Course), who will investigate the issue in accordance with the policy of the relevant awarding body and/or CMS's own processes, and will ensure the complaint is actioned appropriately and timely feedback is provided. You can also contact us by telephoning 01924 470477. The Client shall give any information that CMS may reasonably request. In such an event, the decision by CMS shall be final. If the Client shall fail to comply with these provisions, the Course shall be presumed to be free from complaints or grievances.

11. CMS's Liability to the Client

- 11.1 CMS does not exclude or limit its liability to the Client for any breach or incident for which it would be illegal to do so.
- 11.2 If the Client is a consumer: If CMS fails to comply with these terms, CMS is responsible for loss or damage suffered that is a foreseeable result of CMS's breach or its negligence, but CMS is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is an obvious consequence of CMS's breach or if it was known to both CMS and the Client at the time of entry into the contract.
- 11.3 If the Client is a business: (a) CMS shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract; and (b) CMS's total liability to the Client in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Fee.

12. Default & Consequences of Default

- 12.1 If the Client does not make any payment due to CMS by the due date for payment:
- (a) if the Client is a consumer: CMS may charge interest on the overdue amount at the rate of 3% a year above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Client must pay CMS interest together with any overdue amount; or
- (b) if the Client is a business: CMS reserves the right to charge interest to the Client in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 12.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify CMS from and against all costs and disbursements incurred by CMS in pursuing the debt, including for legal costs on a solicitor and own client basis and CMS's collection agency costs.
- 12.4 Without prejudice to any other remedies CMS may have, if at any time the Client is in breach of any obligation (including those relating to payment), CMS may suspend or terminate the enrolment of the Learner (without a refund) and any of CMS's other obligations under the terms and conditions. CMS will not be liable to the Client and/or the Learner for any loss or damage the Client and/or the Learner suffers because CMS exercised its rights under this clause.
- 12.5 If any account remains overdue after thirty (30) days then an amount of £20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.
- 12.6 Without prejudice to CMS's other remedies at law CMS shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to CMS shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to CMS becomes overdue, or in CMS's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

13. Cancellation and Refund Policy

- 13.1 CMS reserves the right to cancel any contract to which these terms and conditions apply, or cancel the Course at any time before the Course has commenced, by giving notice to the Client via phone or email. On giving such notice CMS shall either repay to the Client any sums paid in respect of the Fee or transfer the balance to another Course. CMS will not authorise the transfer of Fees to any other institution or Learner. CMS shall not be liable for any loss by the Client or Learner howsoever arising out of such cancellation.
- 13.2 Except where cancellation under clauses 13.3 or 15 applies, if the Client or Learner cancels or fails to attend the Course, no refund will be paid to the Client, and any outstanding monies in respect of the Fee owed to CMS shall remain payable (including but not limited to any venue costs, travel and accommodation costs already incurred, and any loss of profits up to the time of cancellation).
- 13.3 The Client may, up to 72 hours prior to its commencement, cancel a Workshop Course booking and re-book an alternative Workshop Course date (subject the availability of places) free of charge. Notice of cancellation and request for an alternative date for the Workshop Course must be in writing to CMS by email or at the address shown in clause 10.1. Cancellation of a Workshop Course and re-booking within 72 hours of the Workshop Course commencement date which be subject to a fee of £100, which must be paid to CMS at the time of cancellation and rebooking.

14. Data Protection Act 1998 ("DPA")

- 14.1 The Client (for the purposes of the DPA) authorises CMS to:
- (a) collect, retain and use any information received about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and

(b) disclose information about the Client, whether collected by CMS from the Client directly or obtained by CMS from any other source, to any credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, any debt collection agency in the event of default or for listing a default by the Client on publicly accessible credit reporting databases.

14.2 CMS may also use information about the Client to monitor and analyse its business. In this connection the Client authorises CMS to disclose personal information to agents or third parties engaged by CMS.

14.3 The Client consents to the transfer of information outside of the European Economic Area for the purposes listed above.

14.4 Where the Client is an individual, the authorities under clause 14.1 are authorities or consents for the purposes of the Data Protection Act 1998.

15. Consumer right to cancel - Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

15.1 Only where the Client is a consumer and the contract has been concluded at a distance or "off-premises" (which includes CMS seeing the Client in their home or workplace, or the Client coming into CMS's offices or going online to make a booking immediately after speaking to a CMS representative at somewhere other than the Client's workplace or making a booking at an event or show), the Client shall be entitled to cancel this contract for any reason without penalty within fourteen (14) days after the day of the purchase, subject to the Client having not commenced the Course nor having downloaded any Course Materials, nor accessed any Course from CMS's website. A model cancellation form is available from CMS or the Client can contact CMS, making it clear that the Client wishes to cancel.

15.2 In the event the Client cancels any contract prior to delivery of the Course Materials (and the Course Materials are in transit), the Client must refuse delivery of the Course Materials.

15.3 Upon cancellation, it shall be the Client's responsibility to return the Course Materials (at their own cost) to CMS. CMS may, at their sole discretion, arrange collection of the Course Materials and any costs incurred shall be deducted from the Client's refund.

15.4 The Client is under a statutory duty to retain possession of the Course Materials and take reasonable care of them. Reasonable care means the Client must take care to ensure CMS receives the returned Course Materials, and that those Course Materials are not damaged in transit.

15.5 CMS shall refund the Client the full amount paid for the Course within thirty (30) days of receipt of the cancellation notice.

16. Client's Disclaimer

16.1 Except in the event of any fraudulent misrepresentation by CMS, the Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by CMS and the Client acknowledges that the Course is bought relying solely upon the Client's skill and judgment.

17. General

17.1 Each of the clauses and sub-clauses of these terms and conditions operate separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

17.2 These Terms are governed by English law. CMS and the Client shall submit to the non-exclusive jurisdiction of the English courts. However, if the Client is a resident of Northern Ireland, the Client may also bring proceedings in Northern Ireland, and a resident of Scotland, the Client may also bring proceedings in Scotland.

17.3 CMS reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which CMS notifies the Client of such change. Except where CMS supplies further Course to the Client and the Client accepts such Course, the Client shall be under no obligation to accept such changes.

17.4 Neither party shall be liable for any default due to any event outside its reasonable control, including but not limited to, an act of God, war, terrorism, strike, lock out, industrial action, fire, power failure, failure of transport network, flood, drought or storm.