

Arco Professional Safety Services Limited Terms & Conditions of Sale

1.0 Interpretation

- 1.1 The definition and rules of interpretation set out in this Clause 1 shall apply for the purposes of these Terms and Conditions.
- 1.1.1. "Arco" means Arco Professional Safety Services Limited and any subsidiary or holding company or associate (as those terms are defined in the Companies Act 1985 (as amended) of that company and also, where the context permits, any sub-contractor of that company or any subsidiary or holding company or associate of that company.
- 1.1.2. "Contract" means a contract for the supply of Goods and/or provision of Services by Arco to the Customer whether made verbally or in writing.
- 1.1.3. "Contracting Services" means any contract for services other than a contract for Training Services.
- 1.1.4. "Customer" means the party from whom a purchase order to supply Goods, Services and/or Training Services is received by Arco.
- 1.1.5. "Emergency Services" means Contracting Services provided by Arco within 24 hours or less of being ordered by the Customer.
- 1.1.6. "Goods" means the equipment which Arco is to supply under the Contract.
- 1.1.7. "Equipment Sales" means the sale of Goods
- 1.1.8. "Purchase Order" means an instruction placed by the Customer for the supply of Goods and/or provision of Services in writing.
- 1.1.9. "Reports" means any opinions, advice or written reports provided by Arco.
- 1.1.10. "Terms and Conditions" means the terms and conditions set out in this document.
- 1.1.11. "Services" means either or both of the Contracting Services and Training Services which Arco is to provide under contract.
- 1.1.12. "Training Material" means all written documentations, diagrams, drawings, slides, videos and other materials produced by Arco for use in relation to the Training Services.
- 1.1.13. "Training Services" means any contract for services (or that part of it) which involves the provision by Arco of instruction or training of any kind.
- 1.2. Words importing the singular number include the plural and vice versa; words importing one gender include all genders; and words importing persons include bodies corporate, unincorporated associations and partnerships.
- 1.3. Any reference to a notice, document or communication being "in writing" shall be deemed to include facsimile or electronic communications.
- 1.4. The condition headings shall not affect the interpretation of the Terms and Conditions.

2.0 Terms and Conditions

- 2.1. Arco shall sell and the Customer shall purchase all Goods and/or Services in accordance with any quotation of Arco which is accepted by the Customer, or, any order of the Customer which is accepted by Arco, subject in either case to these Terms and Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be made by the Customer. These standard Terms and Conditions shall apply to all sections below. No variation to these Terms and Conditions shall be effective unless agreed in writing by a director of Arco. In the event of variation the Customer shall indemnify Arco in full against all loss which includes but is not limited to loss of profits, costs (including all labour and

materials), damages and expenses incurred (directly or indirectly) by Arco as a result of the variation.

- 2.2. Any representation, undertaking or warranty concerning the Goods and/or Services shall have no effect unless expressly agreed in writing by a director of Arco. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Arco which has not been confirmed in writing by a director. Nothing in this Condition shall exclude or limit Arco's liability for fraudulent misrepresentation.

3.0 Description

- 3.1. The quantity, quality and description of the Goods and/or Services shall be as set out in Arco's quotation (if accepted by the Customer) or the Customer's order (if accepted by Arco).
- 3.2. All samples, drawings, descriptive matter, specifications, course contents, prospectus', risk assessment, method statements and advertising issued by Arco and any descriptions or illustrations contained in Arco's catalogues or brochures or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.3. Arco reserves the right to make any changes in the specification of the Goods and/or Services in order to conform to any applicable statutory or EU requirement or to be able to improve the Goods and/or Services.

4.0 Orders and Quotations

- 4.1. Each order or acceptance of a quotation for Goods and/or Services by the Customer from Arco shall be deemed to be an offer by the Customer to buy the Goods and/or Services subject to these Terms and Conditions. No order placed by the Customer shall be deemed to be accepted by Arco until a written confirmation of the order has been issued by Arco or, if earlier, Arco delivers the Goods or performs the Services for the Customer.
- 4.2. Any quotation is given on the basis that it is valid for a period of 30 days only from its date provided that Arco has not previously withdrawn it.
- 4.3. No order which has been accepted by Arco (whether the contract arose from a quotation from Arco accepted by the Customer or an order from the Customer accepted by Arco) may be cancelled by the Customer except with the agreement in writing of Arco and on terms that the Customer shall indemnify Arco in full against all loss (including loss of profit), costs (including where applicable the cost of all labour and materials used), damages, charges and expenses incurred by Arco as a result of cancellation.

5.0 Price and Payment

- 5.1. The price of the Goods and/or Services shall be Arco's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in Arco's published price list current at the date of the Contract. The price is exclusive of any Value Added Tax or other sales tax or duty and (unless otherwise agreed in writing by Arco) of all applicable costs or charges relating to packaging, loading, unloading, carriage, insurance, mileage,

accommodation and labour, all of which are amounts the Customer shall pay in addition when it is due to pay for the Goods and/or Services.

- 5.2. Arco reserves the right, by giving notice to the Customer at anytime before delivery, to increase the price to reflect any increase in the cost to Arco which is due to any factor beyond the control of Arco such as, without limitation, increases in the costs imposed by Arco's suppliers, rates of wages, any foreign exchange currency fluctuation, currency regulation, alteration of duties or taxes, or significant increases in the costs of labour, materials or other costs of manufacture.
- 5.3. Arco shall be entitled to invoice the Customer for the price (and any additional charges due) on or at any time after the date of the Contract.
- 5.4. Payment of pro forma invoices must be made in full in cleared funds before the commencement of any Services or kit builds, ordering of non-stock items or picking and packing takes place or before the commencement of any course.
- 5.5. The Customer shall pay the price (and any additional charges invoiced) within 30 days of the date of invoice unless otherwise agreed by a director of Arco in writing. Time for payment shall be of the essence in the Contract. No payment shall be deemed to have been received until Arco has received cleared funds. All payments payable to Arco under this Contract shall become due immediately on termination of this Contract despite any other provision. The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Arco to the Customer.
- 5.6. If the Customer fails to make any payment under the Contract on or before the due date then, without prejudice to any other remedy available to it, Arco may:
- i. Cancel the Contract and/or suspend any further deliveries of Goods and/or Services to the Customer;
 - ii. Appropriate any payment made by the Customer to such of the Goods and/or Services (or goods/service supplied under any other contract between Arco and the Customer) as Arco may see fit;
 - iii. Charge the Customer interest on the amount due from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Royal Bank of Scotland Plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- 5.7. All certification shall be sent to the invoice address given on the booking form or Purchase Order unless otherwise requested in writing.

6.0 Delivery

- 6.1. Unless otherwise agreed in writing by Arco (and subject to clause 5.1) delivery of the Goods shall take place at the time of despatch from Arco's premises or at the time of completion by Arco of the Services.
- 6.2. Any dates specified by Arco for the delivery of the Goods, and/or provisions of the Services are intended to be an estimate, and time for delivery/provision shall not be made of the essence by notice. Arco shall make reasonable endeavours to comply with any delivery/provision date is so specified, delivery/provision shall be within a reasonable time. If Services need to be re-scheduled, Arco shall give as much notice as possible.
- 6.3. Where the Goods and/or Services are to be delivered by instalments, each instalment shall be a separate Contract and no cancellation or termination of any one Contract

relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment. The Customer shall be liable accordingly for default on any one or more Contract or instalment.

6.4. Subject to the other provisions of these Terms and Conditions Arco shall 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 similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Services (even if caused by Arco's negligence) nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days.

6.5. A signed completion certificate from an Arco employee shall be conclusive evidence of hours worked, satisfactory delivery of Contracting Services unless the Customer can provide conclusive evidence proving the contrary and as such the full Contract price shall be payable in accordance with these Terms and Conditions.

7.0 Risk and Title

7.1 Subject to clause 6, risk or damage to, or loss of, the Goods shall pass to the Customer:

- i. in the case of Goods to be delivered otherwise than at Arco's premises, at the time of despatch from Arco's premises; and
- ii. in the case of Goods to be delivered at Arco's premises, at the time when Arco notifies the Customer that the Goods are available for collection.

7.2 Notwithstanding delivery and the passing of risk in the Goods ownership of the Goods shall not pass to the Customer until Arco has received in full, cleared funds all sums due in respect of:

- i. the Goods
- ii. all other sums which are or which become due to Arco from the Customer on any account.

7.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

- i. hold the Goods (at no cost to Arco) separately from all other Goods of the Customer or any third party in such a way that they remain readily identifiable as the Arco's property;
- ii. not destroy, deface or obscure any identified mark or packaging on or relating to the Goods; and
- iii. maintain the Goods in satisfactory condition and keep them insured on Arco's behalf for their full price against all risk to the reasonable satisfaction of Arco. On request, the Customer shall produce the policy of insurance (and the receipt for the current premium) to Arco.

7.4 Until ownership of the Goods has passed to the Customer, the Customer may resell or use the Goods in the ordinary course of its business and any such sale shall be a sale of Arco's property on the Customer's own behalf and the Customer shall deal as a principal when making such a sale.

7.5 Until ownership of the Goods has passed to the Buyer (and provided that the Goods have not been resold or used by the Customer) Arco shall be entitled to recover the Goods and the Customer's right to possession shall terminate immediately where any of the events in clause 13.1(i) to (v) inclusive occur.

Arco shall be entitled to recover payment for the Goods notwithstanding that ownership of any Goods has not passed from Arco.

7.6 The Customer grants to Arco, its agents and employees an irrevocable licence at any time before ownership of the Goods has passed to the Customer to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to them has terminated, to recover them.

7.7 On termination of the Contract, howsoever caused, Arco's (but not the Customer's) rights contained in clause 7 shall remain in effect.

8.0 Further right to recover property

8.1 If any of these events referred to in clause 7.5 befall the Customer in addition to the rights conferred on Arco by clause 7 the Buyer's title to any goods in its possession or control which were supplied to it by Arco for which full payment has been made in full shall determine and Arco shall be entitled to recover possession of any such goods to a value equal to any sums outstanding to Arco. If Arco has recovered goods to such value title to any further goods supplied by Arco for which payment in full has been made by the Customer which remain in the possession or control of the Customer shall revert to the Customer.

9.0 Limitation of Liability

9.1 Subject to clause 6 and the warranties held in the special terms and conditions attached, the following provisions set out the entire financial liability of Arco (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- i. any breach of these Terms and Conditions and/or the Letter of Engagement;
- ii. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract;

9.2 All warranties, conditions, and other terms implied by statute or common law (save the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permissible by law, excluded from the Contract.

9.3 Nothing in these Terms and Condition

9.4 s excludes or limits the liability of Arco for death or personal injury caused by Arco's negligence or for fraud or fraudulent misrepresentation.

9.5 Subject to clauses 7.2 and 7.3:

- i. Arco'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 payable under the Contract; and
- ii. Arco shall not be liable to the Customer for loss of profits, 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.

9.6 Arco shall not be responsible for the suitability and safety of non-Arco premises used and will not be liable for any resulting loss or damage through the use of such premises.

10.0 Warranties

- 10.1 Subject to the other provisions of these Terms and Conditions Arco warrants that on delivery any equipment installed:
- i. will be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - ii. will correspond with their specification; and
 - iii. shall be fit for purpose if that purpose has been expressed to Arco in writing;
- 10.2 Arco warrants that (subject to other provisions of these Terms and Conditions) provision of the Services will be provided by appropriately qualified and trained personnel who will use due care and diligence to such standard of quality as it is reasonable for the Customer to expect in all the circumstances.
- 10.3 Arco shall not be liable for a breach of either warranties in clause 8.2 unless:
- i. the Customer gives written notice of the defect to Arco, and, if the defect is as a result of damage in transit, to the carrier, within 7 days of delivery or, in case of a defect not apparent on reasonable inspection, within 14 days of the Customer becoming aware of the defect; and
 - ii. Arco is given a reasonable opportunity after receiving the notice of examining such equipment and the Customer (if asked to do so by Arco) returns such equipment to Arco's place of business at the Customer's cost for examination to take place there.
- 10.4 In respect of equipment which is not manufactured by Arco, Arco shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to Arco however Arco shall otherwise not be liable.
- 10.5 Arco shall not be liable for breach of either of the warranties in clause 8.2 if:
- i. the Customer makes any further use of such equipment after giving notice in accordance with clause 8.3;
 - ii. the defect arises by reason of fair wear and tear, wilful damage, failure of the Customer to follow Arco's oral or written instructions as to the storage, use, installation, commissioning or maintenance of the equipment; or
 - iii. the Customer alters or repairs the equipment without the written consent of Arco;
 - iv. the Buyer has not paid the price for such equipment in accordance with the Contract.
- 10.6 Subject to clause 8.3 and 8.5, if any of the equipment does not conform with either of the warranties in clause 5.2, Arco shall at its option repair or replace such equipment (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if Arco so requests, the Customer shall, at the Customer's expense, return the equipment (or the part of the equipment which is defective) to Arco. If Arco complies with clause it shall have no further liability for a breach of either of the warranties in clause 5.2 in respect of such equipment.
- 10.7 You should ensure, in the interests of safety that you are properly trained and equipped in the use of the equipment and the environment and circumstances in which it is used.

You should also ensure that you are properly trained in the techniques you will need to employ in your chosen activity. Arco recommends you seek and take the advice of a person who is suitably qualified before purchasing your equipment. Once purchased, the equipment should only be used in accordance with the manufacturer's instructions and should be inspected before use and properly maintained.

11.0 Force Majeure

11.1 Arco reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods and/or Services ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Arco including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riots, civil commotion, fire, extreme weather, strong winds, explosion, flood, epidemic, lock-outs, strikes or other labour disputes, illness within the 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, the Customer shall be entitled to give notice in writing to Arco to terminate the Contract.

11.2 If the Customer shall terminate the Contract pursuant to clause 8.1, Arco shall be entitled to be paid for any part of the Goods and/or Services which have been delivered pursuant to the Contract.

11.2 General

11.3 Arco may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Arco.

The Company may use sub-contractors or sub-contract any part of the Contract out as it deems necessary to fulfil its obligations under this Contract.

If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonable be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect. Failure or delay by Arco 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. Any waiver by the Company of any breach of, or default under, any provision under the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

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.

Each right or remedy of Arco under the Contract is without prejudice to any other right or remedy of Arco whether under the Contract or not.

Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to the other party at such address as each party may notify to the other for the purposes of this clause 12.7 or (if no such

address has been notified) to the registered office or principal place of business to the recipient.

Any notice given pursuant to clause 12.7 shall be deemed to be served: if delivered by hand, on the first Business Day following delivery; if sent by post, on the third Business Day after posting if the address of the recipient is in the country or despatch, otherwise on the seventh Business day after posting; if sent by facsimile transmission or email on the first Business Day following successful transmission.

In proving service it shall be sufficient proof, in the case of a notice sent by post, that the envelope was properly stamped and addressed and placed in the post and, in the case of facsimile or email, that it was properly addressed and successfully transmitted. In clause 9.8, "Business Day" shall mean any day other than Saturday, Sunday or any other day which is a public holiday in the place at which such notice is left or to which such notice is despatched.

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.

12.0 Intellectual Property

12.1 The Customer hereby acknowledges that all copyright in all Training Materials and Reports vests in Arco.

12.2 If it is agreed in writing that ownership or copyright in any Reports or Training Materials (including certificates) is to pass to the Customer, property shall only pass when such items have been paid for by the Customer in full.

12.3 Unless otherwise agreed in writing and subject to the provisions of this clause¹³, the Customer shall not use any Reports and/or Training Materials (or any part of them) without prior written consent.

13.0 Termination

13.1 Without prejudice to its other rights, Arco may terminate a Purchase Order in whole or in part:

- i. if there is a material breach of these Terms and Conditions (these shall include any breach of clause 5) and/or the Letter of Engagement and if the breach is remediable if it is not remedied within 14 days of Arco sending notice to the Customer); or
- ii. if the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), or a resolution is passed or a petition is presented

- to any court for the winding up of the Customer, or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- iii. the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its obligations under the Contract or any other contract between Arco and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - iv. the Customer ceases to threatens to cease to carry on business or the financial position of the Customer deteriorates to an extent that in the opinion of Arco the capability of the Customer adequately to fulfil its obligations under the Contract has been placed in jeopardy;
 - v. the Customer encumbers or in any way charges any of the Goods; or
 - vi. on the provision of one month's notice at any time prior to the completion of delivery of the Goods and/or Services.
- 13.2 Terminating the Purchase Order shall not affect those Terms and Conditions which are capable of subsisting.

14.0 Cancellation and Returns

- 14.1 No order which has been accepted by Arco (whether the contract arose from a quotation from Arco accepted by the Customer or an order from the Customer accepted by Arco) may be cancelled by the customer except with the agreement in writing of Arco and on terms that the Customer shall indemnify Arco in full against all loss (including loss of profit), costs (including where applicable the cost of all labour and materials used), damages, charges and expenses incurred as a result of cancellation.
- 14.2 If the Customer orders non-standard Goods Arco shall not accept cancellation.
- 14.3 No order which has been delivered by Arco may be returned by the Customer (subject to clause 10) except with the agreement in writing of Arco and on terms that the Customer shall indemnify Arco in full against all loss (including loss of profit), costs (including where applicable the cost of all labour and materials used), damages, charges and expenses incurred as a result of the return.
- 14.4 If cancellation and/or return is accepted by Arco in writing, (including in the case of Equipment Sales) this may be subject to a restocking fee.

15.0 Data Processing Agreement

15.1 Definitions

The following terms will have the following meanings:

Company Data: any Personal Data which may be collected, stored or Processed by the Data Processor in connection with this Addendum, the Agreement and/or any other agreement between us.

Data Breach: the actual, threatened or anticipated unauthorised or unlawful Processing and accidental loss, destruction or damage to Company Data or any other Personal Data being processed by the Data Processor.

Data Controller: Arco Professional Safety Services Limited

Data Processor: The customer.

Data Protection Legislation: the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679 and any other applicable law, guidance or code of practice concerning data protection, privacy or confidentiality and any subordinate or related legislation in force from time to time.

And references to **“Data Subjects”**, **“Personal Data”**, **“Process”**, **“Processed”** and **“Processing”**, have the meanings set out in and will be interpreted in accordance with the Data Protection Legislation.

15.2 Data Protection Obligations

15.2.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation.

15.2.2 Without prejudice to the general obligation in paragraph 0.1, where applicable, the Data Controller will ensure that it has all necessary appropriate consents in place to

enable the lawful transfer of the Personal Data to the Data Processor for the duration and purpose of this Agreement.

- 15.2.3 Without prejudice to the general obligation in paragraph 0.1, the Data Processor shall, in relation to any Company Data:
 - 15.2.3.1 only Process Company Data in accordance with the Data Controller's written instructions, unless Data Protection Legislation allows otherwise;
 - 15.2.3.2 put in place appropriate technical and organisational measures to protect against a Data Breach appropriate to the harm that might result from the Data Breach and the nature of Company Data, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Company Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Company Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 15.2.3.3 ensure that all personnel who have access to and/or Process Company Data are obliged to keep the Company Data confidential;
 - 15.2.3.4 not transfer any Company Data outside of the European Economic Area unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
 - 15.2.3.4.1 the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer;
 - 15.2.3.4.2 the Data Subjects have enforceable rights and effective legal remedies;
 - 15.2.3.4.3 the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Company Data that is transferred; and
 - 15.2.3.4.4 the Data Processor complies with reasonable instructions notified to it in advance by the Data Controller with respect to the Processing of Company Data;

- 15.2.3.5 assist the Data Controller in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 15.2.3.6 notify the Data Controller without undue delay on becoming aware of a Data Breach;
- 15.2.3.7 on request, supply the Data Controller with written particulars of processing undertaken by the Data Processor on the Data Controller's behalf, including the nature and purpose of processing, categories of Data Subject, and type of Personal Data etc.;
- 15.2.3.8 at the written direction of the Data Controller, delete or return Company Data and copies thereof to the Data Controller on termination of this Agreement unless required by law to store Company Data for a period of time;
- 15.2.3.9 not engage a third party data processor (a "Third Party Data Processor") without the Data Controller's prior written consent and ensure that, if engaging a Third Party Data Processor, such Third Party Data Processor is required to comply with written obligations that are at least equivalent to those contained in this Agreement and are not amended or modified without the Data Controller's prior approval. Where that Third Party Data Processor fails to fulfil its data protection obligations, the Data Processor will remain fully liable to the Data Controller for that Third Party Data Processor's obligations; and
- 15.2.3.10 maintain complete and accurate records and information to demonstrate its compliance with this paragraph 15.2.3 and make all such records and information available to the Data Controller. The Data Processor shall also allow for and contribute to audits by the Data Controller or its designated auditor.

16.0 SPECIAL TERMS & CONDITIONS FOR TRAINING SERVICES

16.1 Course Dates and Delivery

- 16.1.1 A completed booking form shall be taken as confirmation of booking and conclusive proof of acceptance of our Terms and Conditions, a copy of which can be found on our website or a copy provided on request.
- 16.1.2 We will hold provisionally booked dates until 14 days prior to the date the course is due to commence. If a booking form and purchase order is not received by this date then the course date may be offered to others. Until a signed booking form is received all dates are offered on a 'first come, first served' basis.
- 16.1.3 All scheduled courses are subject to availability. Courses shall be delivered in the English language and it is the responsibility of the person signing the booking form to ensure all candidates have a suitable and sufficient understanding of the language.
- 16.1.4 For the avoidance of doubt, at all times training course participants remain the employees of the customer

16.2 Equipment

- 16.2.1 All equipment used in provision of the Training Services shall be provided by Arco Professional Safety Services. Should you wish to use your own equipment, we are unable to accept any responsibility for any loss or damage caused to your equipment. Please ensure you are able to produce the inspection information and valid certificates of conformity on our instructor's request for any equipment to be used to avoid the course being cancelled and payable in full in accordance with the Cancellation Policy.

16.3 Offsite Training

- 16.3.1 Where the Training Services are to be provided at premises other than our own premises, please ensure the following:
 - 16.3.1.1 A contact person is available at the training location on the training date who will be responsible for ensuring all facilities are suitably provided and is available to rectify any shortcomings;
 - 16.3.1.2 A suitable site specific risk assessment is in place prior to the commencement of any practical training. You may be asked to provide a risk assessment prior to the delivery of the training for Arco's approval, in the event that Arco find the risk assessment to be unsatisfactory, we reserve the right to undertake our own assessment which may incur an additional cost.
- 16.3.2 The training site will need to meet the following criteria:
 - 16.3.2.1 Have a suitable classroom and practical training area where applicable with enough room for the instructor to present the course;
 - 16.3.2.2 Have sufficient tables and chairs for all candidates undertaking the course;
 - 16.3.2.3 Have an electricity power supply of 240v available for the instructor to use to present PowerPoint presentations;
 - 16.3.2.4 Contain apparatus which allows tasks to be carried out that replicate their work;
 - 16.3.2.5 Exclude others who are not a candidate from entering the practical area
 - 16.3.2.6 Be in an area where background noise is at a suitable level for training to be carried out;

- 16.3.2.7 Have appropriate first aid kits available for use on site (our instructors are first aid trained;
- 16.3.2.8 Have valid inspection and test certificates for any PPE, equipment, access systems (list not exhaustive) to be used during the delivery of the training (we reserve the right to view certificates before training commences);
- 16.3.3 On reasonable notice we may require you to permit Arco Professional Safety Services access to the intended site to inspect the area, premises or building which the training services are to be provided prior to the delivery of the training. We may require your reasonable assistance in undertaking such inspection.
- 16.3.4 Unfortunately we are unable to permit increases in numbers of candidates without our prior agreement and may result in additional numbers being turned away or additional charges being incurred if the instructor permits additional candidates on the course.
- 16.3.5 Depending on the type of work to be undertaken by the candidates, training alone may not be sufficient and additional supervision and/or mentoring might be required following the course.

16.4 Accommodation

- 16.4.1 If an overnight stay is required we are delighted to offer dinner, bed and breakfast with a local provider on request, please call Arco Professional Safety Services for information on pricing and for a copy of the Accommodation Booking Form.

16.5 Medical and Candidate Requirements

- 16.5.1 Candidates should be physically able to perform the task expected in terms of strength, agility and co-ordination and be able to withstand the stress of the working environment such as heat, cold or inclement weather. It is recommended that all personnel employed to climb, use rope access techniques or enter confined spaces should be medically fit to perform the work they are likely to undertake, and that a suitable medical is carried out prior to the training to confirm this.

- 16.5.2 Prior to booking with us, please ensure that candidates are free of medical conditions which are contraindications including but not limited to:

- Heart disease and/or chest pain
- Epilepsy, fits, blackouts
- Giddiness and/or difficulty with balance
- Alcohol or drug dependence
- Diabetes
- Claustrophobia
- Eyesight problems not corrected by glasses or contact lenses
- Raised blood pressure
- Fear of heights and/or vertigo
- Impaired limb function
- Psychiatric illness and/or counselling
- Asthma or impairment of breathing
- Skin problems
- Regular medication impairing attention or consciousness

- 16.5.3 If a candidate suffers from any of the above mentioned medical conditions they will not be allowed to participate in training unless a doctor's note is provided stating the candidate is fit to undertake strenuous activities. The above conditions are examples only and it is therefore a non-exhaustive list, all candidates will be required to self certify their medical suitability for the course.

16.6 Specific Restrictions For Training

- 16.6.1 Candidates must be a minimum of 18 years old for the IRATA course.
- 16.6.2 Candidates who weigh over 136kg may be prohibited from participating in the practical elements of work at height courses and we may be required to weigh candidates before allowing participation. Failure to notify APSS of any candidates exceeding the weight limit will lead to 100% of the course charge being charged. Furthermore, we reserve the right to exclude a candidate on the grounds of weight/health/fitness or for a general unsafe attitude towards health and safety.
- 16.6.3 Any candidates who are exempt from wearing a helmet will be required to sign a waiver.

16.7 Cancellation Policy

- 16.7.1 Unless otherwise explicitly agreed as part of a specific engagement, Arco Professional Safety Services require 14 days cancellation notice, inclusive from date of booking, prior to the scheduled course date, otherwise we will charge you a cancellation fee based on the total amount as below:

<u>Cancellation fee</u>	<u>Notice (days prior to the course date)</u>
20%	>14 days
50%	7 – 14 days
100%	<7 days

- 16.7.3 There may be occasions where we are required to cancel a course where the site and/or facilities in accordance with this letter of engagement are unsuitable, in which case 100% of the course fee will be payable.
- 16.7.4 In the event of postponement/cancellation of accommodation there will be no charge if 48 hours notice is given. Unfortunately less than 48 hours notice will incur the full accommodation cost and will be payable by you.
- 16.7.5 All cancellations must be in writing. None attendance on the date or non-completion of the course shall be chargeable for the full rate of both training and accommodation.
- 16.7.6 Once purchased, online courses are non-refundable.
- 16.7.7 All cancellations must be in writing. None attendance on the date or non-completion of the course shall be chargeable for the full rate of both training and accommodation. Once purchased, online courses are non-refundable.

17.0 NOT USED

18.0 SPECIAL TERMS & CONDITIONS FOR SITE BASED SERVICES

18.1 Site Preparation

18.1.1 Where site based services are to be provided at customer sites the following conditions shall apply and unless otherwise agreed by the Company in writing the Buyer shall be responsible for:-

18.1.1.2 Where undertaken by the Buyer all agreed preparations/enabling works of the site including all necessary preparatory work prior to attendance by the Company;

18.1.1.3 The provision of scaffolding, lifting and any other equipment (excluding the equipment normally provided by the Company) and all services required to deliver the Services;

18.1.1.4 Any works whether preparatory to the delivery of the Services or in the provision itself not specifically included in the Company's quotation; and

18.1.1.5 Giving the Company unhindered access to and possession of the site at such time and in such state as may enable it to complete the provision of the Services within any agreed time limit;

18.1.1.6 Provide information to the Company in good time prior to delivery of the Services of safety related items including but not limited to the existence of asbestos, fragile roofing surfaces, confined spaces, unprotected edges

18.1.2 If the Buyer fails to provide all or any of the items referred to in Clause 18.1 when the Company reasonably requires them or to the Company's reasonable satisfaction then having given the Buyer a reasonable opportunity to remedy such failure the Company at its discretion and at its sole option arrange for the provisions of the item or items required and the expense incurred in providing any item shall be payable by the Buyer on demand.

18.1.3 On reasonable notice the Buyer will allow the Company to inspect the area, premises or building at which the Services are being provided and will, prior to the Services commencing, provide the Company with any reasonable assistance that may be required.

18.1.4 If in the reasonable opinion of the Company's representatives the conditions under which the Services are to be provided are unsafe in any way, the Company will not be responsible for any extra cost that the Buyer incurs until the conditions are suitable (in the reasonable opinion of the Company's representative) for the Services to be carried out.

18.1.5 The Buyer will pay the Company any extra costs that it incurs as a result of any variation, delay or suspension of work arising from any actor or omission by the Buyer or any other contractor employed by the Buyer or any circumstance for which the Company is not responsible.

18.1.6 If the Services are provided by the Company in an emergency, these Terms and Conditions shall apply notwithstanding that these Terms and Conditions may not have been seen by the Buyer until after the provision of those Services.

18.1.7 If the Company employees are not allowed on site this shall be deemed as a cancellation and Clause 18.5 shall apply.

18.2 Personnel

18.2.1 The Company warrants that (subject to other provisions of these Terms & Conditions) delivery of the Services will be provided by appropriately qualified and trained personnel who will use due care and diligence to such standard of quality as it is reasonable for the Buyer to expect in all the circumstances.

18.3 Attendances

18.3.1 Unless otherwise agreed in writing the Services will be delivered within normal working hours and in one continuous attendance;

18.3.2 No attendance for delivery of the Services will take place without written instruction;

18.3.3 Verbal instructions from the Buyer to the Company which are a deviation to the quoted and agreed price shall be made on a Confirmation of Verbal Instruction certificate and signed by the Buyers representative who has the authority to issue such instructions.

18.4 Payment

18.4.1 Payment of pro forma invoices must be made in full in cleared funds before the commencement of the Services.

18.4.2 For account holders payment terms are detailed in Clause xx of the General Terms and Conditions detailed above.

18.4.3 Reports, certificates of inspection, test and servicing shall only be issued on receipt of full payment for the Service and any additional charges in relation to those Services.

18.4.4 All reports, certificates of inspection, test and servicing shall be sent to the invoice address given on the Purchase Order unless otherwise requested in writing.

18.5 Cancellation

18.5.1 In the event of postponement/cancellation of the Services:

18.5.1.1 A mobilization charge shall be applicable the details of which will be set out in the Letter of Engagement; and

18.5.1.2 Charges may also be applicable for any components purchased for carrying out the Services.

18.5.1.3 To avoid cancellation costs, the Company may be able to transfer dates for the delivery of the Services. An administration charge per change shall be applicable the details of which will be set out in the Letter of Engagement.

18.5.2 All cancellations must be in writing.

18.5.3 If the Services cannot be completed due to a material breach of these Terms and Conditions the Buyer shall be liable for the full contract price.

18.6 Warranties

- 18.6.1 Subject to the other provisions of these Terms and Conditions the Company warrants that on delivery of the equipment or materials to be incorporated into the Works:
 - 18.6.1.1 Will be satisfactory quality within the meaning of the Sale of Goods Act 1979; and
 - 18.6.1.2 Will correspond with their specification; and
 - 18.6.1.3 Shall be fit for purpose if that purpose has been expressed to the Company in writing.
- 18.6.2 The Company shall not be liable for a breach of warranties unless;
 - 18.6.2.1 The Buyer given written notice of the defect to the Company, and if the defect is as a result of the damage in transit to the carrier, within 7 days of delivery or, in case of a defect not apparent on reasonable inspection, within 14 days of the Buyer becoming aware of the defect; and
 - 18.6.2.2 The Company is given a reasonable opportunity after receiving the notice of examining such equipment and the Buyer (if asked to do so by the Company) returns such equipment to the Company's place of business at the Buyer's cost for the examination to take place there.
- 18.6.3 In respect of equipment that is not manufactured by the Company, the Company shall endeavor to transfer to the Buyer the benefit of any warranty or guarantee give to the Company however the Company shall otherwise not be liable.
- 18.6.4 The Company shall not be liable for a breach of the warranties in Clause 18.6.1 if;
 - 18.6.4.1 The Buyer makes any further use of such equipment after giving notice in accordance with Clause 18.6.2
 - 18.6.4.2 The defect arises by reason of fair wear and tear, willful damage, failure of the Buyer to follow the Company's oral or written instructions as to the storage, use, installation, commissioning or maintenance of the equipment; or
 - 18.6.4.3 The Buyer alters or repairs the equipment with the written consent or the Company; or
 - 18.6.4.4 The Buyer has not paid the Price for the such equipment in accordance with the Contract.
- 18.6.5 Subject to Clause 18.6.2 and 18.6.4, if any of the equipment does not conform with either of the warranties in Clause 18.6.1 the Company shall at its option repair or replace such equipment (or defective part) or refund the Price of such Goods at the pro rata Contract rate provided that, if the Company so requests , the Buyer shall, at the Buyer's expense, return the equipment (or part of the equipment that is defective) to the Company. If the Company complies with Clause 18.6.5 it shall have no further liability for breach of either of the warranties in Clause 18.6.1 in respect of such equipment.

18.7 Delivery

- 18.7.1 Subject to the other provisions of these Terms and Conditions the Company shall 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 an similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Services (even if caused by the Company's negligence) nor shall any delay entitle the buyer to terminate or rescind the Contract unless such delay exceeds 90 days.

- 18.7.2 A completion certificate (in the format most applicable to the Service being provided by the Company) and signed by a representative who is appointed and authorized of the Buyer shall be conclusive evidence of the hours worked, satisfactory delivery of the Services unless the Buyer can provide conclusive evidence proving the contrary and as such the full Contract Price will become due and the shall be payable in accordance with these Terms and Conditions.

19.0 SPECIAL TERMS & CONDITIONS FOR EQUIPMENT SALES

19.1 Delivery

- 19.1.1.1 The quantity of any consignment of Goods as recorded by the Company on dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 19.1.1.2 If for any reason the Buyer fails to accept deliver of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided instructions, documents, licenses or authorizations:
- 19.1.1.3 The risk in Goods shall pass to the Buyer (including loss or damage caused by the Company's negligence); and
- 19.1.1.4 The Goods shall deem to have been delivered; and
- 19.1.1.5 The Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and
- 19.1.1.6 The Company may opt to cancel the Contract without prejudice to a claim for loss of profit and/or cost and expense on a quantum merit basis incurred in the manufacture of the Goods.
- 19.1.2 Any dates specified by the Company for the delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. The Company shall make reasonable endeavours to comply with any delivery date specified by it. If no delivery date is so specified, delivery shall be with a reasonable time.
- 19.1.3 Subject to the other provisions of these Terms and Conditions the Company shall 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 similar loss), costs, damages, charges or expanses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence) nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days.

19.2 Risk And Title

19.2.1 Subject to Clause 19.1, risk of damage to, or loss of, the Goods shall pass to the Buyer:

19.2.1.1 In the case of Goods to be delivered otherwise than at the Company's premises, at the time of dispatch from the Company's premises; and

19.2.1.2 In the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection.

19.2.2 Notwithstanding delivery and the passing of risk in the Goods ownership of the Goods shall not pass to the Buyer until the Company has received in full, cleared funds for all sums due in respect of:

19.2.2.1 The Goods; and

19.2.2.2 All other sums which are or which become due to the Company from the Buyer on any account.

19.2.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

19.2.3.1 Hold the Goods on a fiduciary basis as the Company's bailee;

19.2.3.2 Store the Goods (at no cost to the Company) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

19.2.3.3 Not destroy, deface or obscure any identified mark or packaging on or relating to the Goods; and

19.2.3.4 Maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full Price against all risk to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance (and the receipt for the current premium) to the Company.

19.2.4 Until ownership of the Goods has passed to the Buyer, the Buyer may resell or use the Goods in the ordinary course of its business and any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as a principal when making such a sale.

19.2.5 Until ownership of the Goods has passed to the Buyer (and provided that the Goods have not been resold or used by the Buyer) the Company shall be entitled to recover the Goods and the Buyers' right to possession shall terminate immediately if:

19.2.5.1 The Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise take the benefit any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose of reconstruction or amalgamation, or has a receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), of a

resolution is passed or a petition is presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

- 19.2.5.2 The Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property of obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or the Buyer ceases to trade; or
- 19.2.5.3 The Buyer encumbers or in any way charges any of the Goods.
- 19.2.6 The Company shall be entitled to recover payment of the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 19.2.7 The Buyer grants to the Company, its agents and employees an irrevocable license at any time before ownership of the Goods has passed to the Buyer to enter any premises where the Goods has passed to the Buyer to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to them has terminated, to recover them.
- 19.2.8 On termination of the Contract, however caused, the Company's (but not the Buyer's) rights contained in Clause 19.3 shall remain in effect.

19.3 Further rights to recover property

- 19.3.1 If any of the events referred to in Clause 19.2.5.1, 19.2.5.2, or 19.2.5.3 shall befall the Buyer in addition to the rights conferred on the Company by Clause 19.2 the Buyer's title to any goods in its possession or control which were supplied by the Company for which payment has been made in full shall determine and the Company shall be entitled to recover possession of any such goods to a value equal to any sums outstanding by the Company. If the Company has recovered goods to such value title to any further goods supplied by the Company for which payment in full has been made by the Supplier which remain in the possession or control of the Buyer shall revert to the Buyer.

19.4 Payment

- 19.4.1 Payment of pro forma invoices must be made in full in cleared funds before the commencement of any equipment builds, ordering of non-stock items or picking and packing.
- 19.4.2 For account holders payment terms are detailed in Clause 5 of the General Terms and Conditions detailed above.
- 19.4.3 All certification shall be sent to the invoice address given on the Purchase Order unless otherwise requested in writing.

19.5 Warranties

- 19.5.1 Subject to the other provisions of these Terms and Conditions the Company warrants that on delivery the Goods:

- 19.5.1.1 Will be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 19.5.1.2 Will correspond with their specification; and
- 19.5.1.3 Shall be fit for purpose if that purpose has been expressed to the Company in writing.
- 19.5.2 The Company shall not be liable for a breach of either warranties in Clause 19.5.1 unless:
 - 19.5.2.1 The Buyer gives written notice of the defect to the Company and, if the defect is as a result of the damage in transit, to the carrier, within 7 days of delivery or, in case of a defect not apparent on reasonable inspection, within 14 days of the Buyer's becoming aware of the defect; and
 - 19.5.2.2 The Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Good to the Company's place of business at the Buyer's cost for the examination to take place there.
- 19.5.3 In respect of Goods which are not manufactured by the Company, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company however the Company shall otherwise not be liable.
- 19.5.4 The Company shall not be liable for a breach of either of the warranties in Clause 19.5.1 if:
 - 19.5.4.1 The Buyer makes any further use of such Goods after giving notice in accordance with Clause 19.5.2,
 - 19.5.4.2 The defect arises by reason of fair wear and tear, willful damage, failure of the Buyer to follow the Company's oral or written instructions as to the storage, use, installation, commissioning or maintenance of the Goods; or
 - 19.5.4.3 The Buyer alters or repairs the Goods without the written consent of the Company; or
 - 19.5.4.4 The Buyer has not paid the Price for such Goods in accordance with the Contract.
- 19.5.5 Subject to Clause 19.5.2 and 19.5.4, if any of the Goods do not conform with either the warranties in Clause 19.5.1 the Company shall at its option repair or replace such Goods (or defective part) or refund the Price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expenses, return the Goods (or the part of the Goods which is defective) to the Company. If the Company complies with this Clause 19.5.5 it shall have no further liability for a breach of either of the warranties in Clause 19.5.1 in respect of such Goods.

19.6 Cancellation of Order

- 19.6.1 No order which has been accepted by the Company (whether the contract arose from a quotation from the Company accepted by the Buyer or an order from the Buyer accepted by the Company) may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including where applicable the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

19.6.1.1 If cancellation is accepted by the Company in writing this may be subject to a restocking fee.

19.6.1.2 If the Buyer orders non-standard Goods the Company shall not accept cancellation of the order.

19.7 Returns

19.7.1 No order which has been delivered by the Company may be returned by the Buyer (subject to Clause 19.5) except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including where applicable the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of the return.

19.7.2 If the return is accepted by the Company in writing this may be subject to a restocking fee.