



## Training Terms and Conditions

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

"**Charges**" means the charges payable by the Customer for the supply of the Services in accordance with clause 5.

"**Conditions**" means these terms and conditions as amended from time to time.

"**Contract**" means the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

"**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures**" means as defined in the Data Protection Legislation.

"**Course**" means a training course offered by the Supplier.

"**Customer**" means the person or firm who purchases Services from the Supplier.

"**Data Protection Legislation**" means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

"**Intellectual Property Rights**" means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"**Order**" means the Customer's order for Services as set out in the Customer's request to attend a Course.

"**Services**" means the services supplied by the Supplier to the Customer in providing the Course as set out in the Specification.

"**Specification**" means that each Course will be CPD accredited and will include lectures/seminars, live training on using Theraplate equipment, question & answer session and an examination.

"**Supplier**" means TheraPlate Ltd registered in England and Wales with company number 11216960.

"**UK Data Protection Legislation**" means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

#### 1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to **writing** or **written** includes fax and email.

### 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").

Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of



giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

### 3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, if requested to do so by the manufacturer of Theraplate, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.4 Each Course is concluded with an examination. It shall not constitute any failure on the part of the Supplier if the Customer fails to complete or pass the examination.
- 3.5 The Customer shall not be entitled to resit such examination without attending another Course at the Customer's cost.

### 4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
  - 4.1.1 make full payment for each Course in advance of the date of the Course;
  - 4.1.2 co-operate with the Supplier in all matters relating to the Services;
  - 4.1.3 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 4.1.4 comply in all respects with the Code of Conduct provided by the Supplier (as amended from time-to-time);
  - 4.1.5 ensure that it has sufficient understanding of Theraplate equipment and its uses to properly benefit from the Course, and have a realistic chance of passing the examination;
  - 4.1.6 comply with all applicable laws, including health and safety laws; and
  - 4.1.7 comply with any additional obligations as set out in the Specification.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("Customer Default"):
  - 4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

### 5. CHARGES AND PAYMENT

- 5.1 The Charges in respect of each Course must be paid up front.
- 5.2 The Supplier reserves the right to increase the Charges at its discretion, but such an increase shall not apply to any Orders already made.
- 5.3 The Supplier may refuse to accept any person onto a Course at its absolute discretion.
- 5.4 The Customer shall pay each invoice submitted by the Supplier within 14 days of the date of issue of such invoice. Failure to pass the examination shall not entitle the Customer to any refund whatsoever.
- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 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).



**6. INTELLECTUAL PROPERTY RIGHTS & LICENCE**

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 6.2 Subject to successful completion of the examination at the end of a Course, the Customer shall be offered to entitled to:
- 6.2.1 describe themselves as a Theraplate Specialist; and
- 6.2.2 become a member of the International Association of Theraplate Specialists;
- in each case subject to entering into the Supplier's standard Intellectual Property Rights Licence ("Licence").
- 6.3 The term and ongoing requirements of that Licence are set out therein.

**7. DATA PROTECTION**

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 7.3 Without prejudice to the generality of clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 7.4 The Customer consents to the Supplier appointing third party processors of personal data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with such third party processors into a written agreement to reflect the requirements of the Data Protection Legislation.

**8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 8.1.2 fraud or fraudulent misrepresentation;
- 8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 8.1.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 8.2 Subject to clause 8.1:
- 8.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any (in each of clauses 8.2.1.1 to 8.2.1.8 whether such liability is direct or indirect):
- 8.2.1.1 loss of profit;
- 8.2.1.2 loss of customers;
- 8.2.1.3 loss of business;
- 8.2.1.4 loss of revenue;
- 8.2.1.5 loss of contracts;
- 8.2.1.6 increase in costs or loss of anticipated savings;
- 8.2.1.7 losses to third parties;
- 8.2.1.8 loss of goodwill or damage to reputation; or
- 8.2.1.9 indirect or consequential loss
- arising under or in connection with the Contract; and
- 8.2.2 the Supplier's total liability to the Customer in respect of all 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 price paid by the Customer for Services under the Contract.

**9. TERMINATION**

- 9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 3 months' written notice. The Customer shall not receive a refund for any Courses booked, but not yet attended.



- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 9.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- 9.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
- 9.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 9.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on

the due date for payment, the Customer becomes subject to any of the events listed in clause 9.2.2 or clause 9.2.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

#### 10. CONSEQUENCES OF TERMINATION

- 10.1 On termination of the Contract the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

#### 11. GENERAL

- 11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 **Assignment and other dealings.**
- 11.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 11.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 11.3 **Confidentiality.**
- 11.3.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3.2.
- 11.3.2 Each party may disclose the other party's confidential information:
- 11.3.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
- 11.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.



- 11.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 11.4 **Entire agreement.**
- 11.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.
- 11.4.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 11.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 11.7 shall not affect the validity and enforceability of the rest of the Contract.
- 11.8 **Notices.**
- 11.8.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 11.8.2 Any notice shall be deemed to have been received:
- 11.8.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- 11.8.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 11.8.3 This clause 11.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 11.9 **Third party rights.**
- 11.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 11.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.10 **Governing law.** 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 Wales.
- 11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.