



**armadillo**  
**safety solutions**

© Copyright

## Terms and Conditions of Service



**armadillo**  
**safety solutions**

© Copyright

## 1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 “Consumer” shall have the meaning ascribed in section 12 of the Unfair Contract Terms Act 1977;
- 1.2 “Customer” means any person or company who purchases the Services from the Supplier;
- 1.3 “Proposal” means the statement of work, accepted quotation, or other document or electronic communication describing the Services to be provided by the Supplier;
- 1.4 “Service or “Services” means the services specified in the Proposal;
- 1.5 “Software” means software accessed online or used on mobile devices by the Customer under any agreement made pursuant to a Proposal on these Terms and Conditions;
- 1.6 “Supplier” means Armadillo Safety Limited (Trading as Armadillo Safety Solutions) of 6 Grange Crescent, Tenterden, Kent TN30 6DZ and with email mark@armadillo-safety.co.uk>;
- 1.7 “Terms and Conditions” means the terms and conditions of supply set out in this document and any special terms and conditions set out in any Proposal or otherwise agreed in writing by the Supplier;
- 1.8 “Training” means any Service, which consists of face-to-face and/or online training in connection with energy evaluation accreditation.
- 1.9 The expression “the Act” means the Companies Act 2006, but so that any reference in these Terms and Conditions to any provision of the Act shall be deemed to include a reference to any statutory modification or re-enactment of the provision for the time being in force.
- 1.10 These Terms and Conditions shall apply to all contracts for the supply of Services by the Supplier to the Customer and shall prevail over any other documentation or communication from the Customer.
- 1.11 Any variation to these Terms and Conditions shall be inapplicable unless agreed in writing by the Supplier. Latest version available from our website: [www.armadillo-safety.co.uk](http://www.armadillo-safety.co.uk). Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Supplier may be entitled in relation to the Services, by virtue of any statute, law or regulation.
- 1.12 Nothing in these Terms and Conditions shall affect the Customer’s statutory rights as a Consumer.



**armadillo**  
**safety solutions**

© Copyright

## **2 THE ORDER**

All Orders for Services shall be deemed to be acceptance and contractual agreement of the Proposal pursuant to these Terms and Conditions.

The contract between the Supplier and the Customer shall come into effect when the Customer indicates its acceptance of these Terms and Conditions by clicking the acceptance button online or by written agreement.

## **3 PRICE AND PAYMENT**

- 3.1 The price for the Services are subject to any applicable charges and only where stated in the Proposal are exclusive of VAT.
- 3.2 Payment of the price shall be in the manner specified in the Proposal.
- 3.3 If the Customer fails to make payment within 30 days of it becoming due, the Supplier shall be entitled to charge interest at the current base rate plus 2.00% per month on the outstanding amounts.
- 3.4 Failure to make payment on invoice/s due after the 30 day Terms have lapsed will result in the whole balance becoming due & payable.

## **4 SERVICES**

- 4.1 The Supplier shall provide services to support clients during normal business hours.
- 4.2 The Supplier shall use only competent IOSH accredited health and safety professionals to provide advice and consultation.
- 4.3 Time for delivery shall not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the performance of Services.
- 4.4 Services specified in the Proposal will be provided by the Supplier to the Customer within the terms specified in the Proposal.
- 4.5 Days outside the proposal will be charged at £600 + VAT



**armadillo**  
safety solutions

© Copyright

## 5 CUSTOMER'S OBLIGATIONS

To enable the Supplier to perform its obligations the Customer shall:

- 5.1 co-operate with the Supplier
- 5.2 provide the Supplier with any information reasonably required by the Supplier;
- 5.3 obtain all necessary permissions, licenses and consents which may be required before the commencement of the Services, the cost of which shall be the sole responsibility of the Customer; and
- 5.4 comply with such other requirements as may be set out in the Proposal or otherwise agreed between the parties.
- 5.5 For the provision of Services by the Supplier the Customer must provide the Supplier with a proper contact address (PO Box is not acceptable) and any contact details as required by the Supplier and agree to inform the Supplier immediately in writing (an email is an acceptable form of writing) of any changes thereto. The Supplier may at their discretion either suspend or terminate the supply of services if they are unable to contact the Customer.
- 5.6 Accept that any documentation provided by Armadillo Safety Limited as part of this agreement remains the property of Armadillo Safety Limited and will not be copied and/or passed on to any other person outside the business or be used at any other premise apart from that/those named above.
- 5.7 Agree as far as is reasonably practicable to co-operate with any recommendations made by Armadillo Safety Limited and I will not take any actions or allow any actions to occur which contradict the advice of Armadillo Safety Limited or which will harm Armadillo Safety Limited in the eyes of other clients, potential clients or enforcement bodies.
- 5.8 Understand that all documentation provided by Armadillo Safety Limited, are provided as templates, designed to be made bespoke by my company and are sent for reference use only. Armadillo Safety Limited will not be held liable for any documents or risk assessments deemed not suitable and sufficient.



**armadillo**  
safety solutions

© Copyright

## **6 SUPPLIER'S OBLIGATIONS**

- 6.1 The Supplier shall provide the Services with reasonable skill and care and to a reasonable standard in accordance with recognised standards and codes of practice.
- 6.2 The Supplier warrants that it has and will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under any agreement made pursuant to these Terms and Conditions.

## **7 CANCELLATIONS AND REFUNDS FOR SERVICES**

- 7.1 Where Services do not comply with the Proposal, the Customer must notify the Supplier within 7 days. Once the Supplier has confirmed that Services do not comply with any of the contract the Customer shall be entitled to a full refund.
- 7.2 Any request by the Customer to cancel an Order must be made by notifying the Supplier in writing (an email is an acceptable form of writing) at the contact address specified at the time of placing the order. Refunds will not be made where:
  - a) the Services being supplied comply with the contract; or
  - b) the Supplier has incurred expenditure with sub-contractors to fulfil the order.
- 7.3 Booked days must be cancelled a minimum of 48 hours prior to the visit or the full charge for the day will be owed.

## **8 CONFIDENTIALITY**

All mail items received and business information acquired by the Supplier are treated as commercially confidential and will not be disclosed or supplied to any third party outside of the Supplier or partner companies as agreed in the contract for provision of Services. The duty of confidentiality by the Supplier to the Customer does not apply when the Supplier is required by English law to provide information to the police or other organisations empowered by statute or under any money laundering regulations in force for the time being.

## **9 DATA PROTECTION**

9.1 Any party shall comply with its respective obligations under the Data Protection Act 1998 (DPA) (as amended or replaced from time to time) and neither party shall do any act that puts the other party in breach of its obligations set out in this term and nothing in any agreement made between



**armadillo**  
safety solutions

© Copyright

the parties shall be deemed to prevent any party from taking the steps its reasonably deems necessary to comply with the DPA;

9.2 The parties acknowledge that the Customer alone shall determine the purposes for which and the manner in which Personal Data as defined in the DPA (are, or are to be, processed in connection with the Services and the Customer shall be the Data Controller (as defined in the DPA) in respect of all Personal Data processed in the performance of the Services and the Supplier shall be the Data Processor (as defined in the DPA) in respect of the Personal Data processed as required for the performance of the Services;

9.3 In the event that it processes Personal Data, the Supplier shall maintain sufficient technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and to prevent any loss, destruction or unauthorised disclosure of Personal Data having regard to the nature of the Personal Data to be processed;

9.4 The Supplier shall in all respects provide reasonable assistance to the Customer as necessary to allow the Customer to comply with the DPA;

9.5 The Customer shall fully and effectively indemnify the Supplier against any loss, liability for costs incurred by the Supplier as a result of any breach of the DPA by the Customer.

9.6 The Supplier shall ensure that a back up copy of all data put on to the Software by the Customer shall be taken at the end of each 24 hour period with such backup tapes stored off site in a secure location. The Supplier operates a disaster recovery procedure and, in the event of a disaster, the Supplier shall reconstruct the data of the Customer inputted in the Software in accordance with such disaster procedure.

9.7 The Customer shall own all right, title and interest in and to all of its data inclusive of Personal Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such data.

## **10 LIMITATION OF LIABILITY**

10.1 Nothing in these Terms and Conditions shall exclude or limit the liability of the Supplier for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors or for fraud or fraudulent misrepresentation.

10.2 The Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (inclusive of negligence), breach of statutory duty, misrepresentation or otherwise, for any loss of profit, loss of data or any indirect or consequential loss arising out of or in connection with the use or provision of the Services.

10.3 The Supplier gives no representation or warranty that the Services as used by the Customer or any calculation or assessment will achieve any particular result or level of accuracy and the Supplier shall not be liable for any consequence arising out of or in connection with the Customer's use of the Services.



**armadillo**  
**safety solutions**

© Copyright

10.4 For the avoidance of doubt, time shall not be of the essence and any damage caused or contributed by any failure by the Supplier to provide the Services by any agreed completion date shall be limited as stated herein.

10.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from any of the Terms and Conditions.

10.6 The Supplier's total liability to the Customer in respect of all losses arising out of or in connection with the provision of the Services (whether in contract, tort (including negligence), breach of statutory duty, or otherwise) that are not excluded by these Terms and Conditions shall be limited (at the Supplier's election) to either re-performance of the Services or to a sum not exceeding the amounts paid by the Customer with respect to the subject matter of the relevant Proposal.

10.7 These limitation of liability Terms and Conditions shall survive termination or expiry of any contract for the supply of the Services.

10.8 For the avoidance of doubt, time shall not be of the essence and the Supplier shall incur no liability to the Customer in respect of any failure to complete the Services by any agreed completion date.

## **11 INDEMNITY**

11.1 The Customer agrees to indemnify each of the Supplier, its officers, directors and employees, agents and subcontractors against:

11.1.1 the consequences of any use of the Services by the Customer;

11.1.2 all claims by third parties and any other claim under common law or by statute arising out of any such use of the Services by the Customer;

11.1.3 all damages, penalties, costs and expenses to which each or any of them may become liable as the result of any use of the Services which involves the infringement by the Customer of any intellectual property right of any third party;

11.2 The Customer accepts that notwithstanding the intended use of the Services including energy use assessment and proposed certification, the Supplier does not know every purpose for which the Services are used or every circumstance under which results from the use of the Services are expected to be obtained or whether the persons using the Services are competent to do so or appropriately trained and accordingly in the light of these considerations, the Customer accepts the provisions of the indemnity and limitation of liability terms herein as being reasonable ones.

11.3 The Supplier shall defend the Customer, its officers, directors and employees, agents and subcontractors, against any claim that the Services or the Software infringe any intellectual property rights of any third party and shall indemnify the Customer of any amounts awarded against the Customer in judgment or settlement of such claims provided that the Supplier is given prompt notice



**armadillo**  
safety solutions

© Copyright

of such claim. In which the Customer provides reasonable co-operation to the Supplier in the defence or settlement of such claim at the Supplier's expense. The Supplier is given sole authority to defend or settle the claim and in no event shall the Supplier, its employees, directors, agents or subcontractors shall be liable to the Customer to the extent that the alleged or actual infringement is based on a modification of the Services by anyone other than the Supplier or the Customer's use of the Services in a manner contrary to the instructions given to the Customer by the Supplier or the Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

## **12 TERMINATION**

The Supplier shall have the right to terminate any agreement with the Customer forthwith on giving notice in writing (an email is an acceptable form of writing) to the Customer on the occurrence of any one or more of the following events:

12.1 breach of the terms of any agreement on these Terms and Conditions by the Customer which the Customer is unable to remedy within 30 days of receipt of notice by the Supplier to do so;

12.2 if a petition is made for the Customer's insolvency or an insolvency order is made against the Customer or if the Customer makes any composition or arrangement with or for the benefit of creditors or makes any conveyance or assignment for the benefit of creditors;

12.3 where the Customer is a company; if any action is taken for or with a view to its winding up, or a petition is presented for an administration or a winding up order against it or such an order is made, or it becomes insolvent or unable to pay its debts within the meaning of Section

12.4 of the Insolvency Act 1986, or an administrative receiver, receiver or manager of its undertaking is duly appointed by a creditor or by the court, or possession is taken of any of its property by an encumbrancer and in that event such termination shall not affect any rights which the Supplier may have against the Customer in consequence of the breach by the Customer;

12.5 if without reasonable cause the Customer with-holds either an agreed interim or full payment to the Supplier in respect of this contract or any other contract between the two parties; or

12.6 if it is the Suppliers belief that the Services are being used with fraudulent or criminal intent.

## **13 WAIVER**

Failure by either party to enforce or exercise any rights granted under any agreement made on these Terms and Conditions shall not affect such party's rights or constitute a waiver or forfeiture of such rights.

## **14 THIRD PARTY RIGHTS**

Any person who is not a party to any agreement made on these Terms and Conditions shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of any agreement



**armadillo**  
safety solutions

© Copyright



and to enforce any of these Terms and Conditions. This term does not affect any right or remedy of any person which exists or is available or otherwise pursuant to such Act.

## **15 FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

## **16 SEVERANCE**

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## **17 ASSIGNMENT**

The Customer shall not be entitled to assign its rights or obligations under any contract with the Supplier without the prior written consent of the Supplier.

17.1 Armadillo Safety Ltd may at any time in the fulfilment of its contract may, for reasons of either resource availability or the need for specialist skills, subcontract all or part of the contract to any other individuals or organisations, as it sees necessary.

## **18 NOTICES**

Where a notice is to be given to any party hereto it may be served by leaving it at the registered office or last known address of that party.

Otherwise it may be sent by first class letter post to the registered office or the last known address of that party, when it shall be deemed to have been served at the expiration of 48 hours after it has been posted.

## **19 GOVERNING LAW**

These Terms and Conditions shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.



**armadillo**  
safety solutions

© Copyright