



## 1. INTERPRETATION

In these Conditions, the following definitions apply:

<b>"Business Day"</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
<b>"Candidate"</b>	means a person attending a Course;
<b>"Certificates"</b>	document issued to a person completing a Services of study;
<b>"Charges"</b>	the charges payable by the Customer for the supply of the Services in accordance with clause 5;
<b>"Commencement Date"</b>	has the meaning set out in clause 2.2;
<b>"Conditions"</b>	these terms and conditions as amended from time to time in accordance with clause 13.8;
<b>"Contract"</b>	the contract between Lavender International and the Customer for the supply of Services in accordance with these Conditions;
<b>"Course"</b>	the scheduled training course the Customer is booked on to, where applicable;
<b>"Customer"</b>	the person or firm who purchases Services from Lavender International;
<b>"Intellectual Property Rights"</b>	all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
<b>"Lavender International"</b>	Lavender International NDT Consultancy Services Limited registered in England and Wales with company number 01872624;
<b>"Lavender International Materials"</b>	has the meaning set out in clause 4.1.8;
<b>"Level 3 Contracts"</b>	an appointment by a company to provide a consultancy service on their behalf;
<b>"Order"</b>	in the Customer's purchase order form, or the Customer's written acceptance of a quotation by Lavender International, or overleaf, as the case may be;
<b>"Results Notices"</b>	a document confirming the marks of an examination or assessment;
<b>"Services"</b>	the services, supplied by Lavender International to the Customer as set out in the Specification;
<b>"Specification"</b>	a detailed description of services provided in writing by Lavender International to the Customer as detailed in one of: <ul style="list-style-type: none"><li>a. Joining Instructions</li><li>b. Customer Purchase Order</li><li>c. Customer Exam Proforma</li><li>d. Email as agreed between parties</li><li>e. Services code as per Lavender Handbook;</li></ul>
<b>"Trainer"</b>	the Lavender International employee or representative who delivers the Services to Customers;
<b>"Website"</b>	means <a href="http://www.lavender-ndt.co.uk">www.lavender-ndt.co.uk</a> .



**1.1 Construction. In these Conditions, the following rules apply:**

- 1.1.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.1.2 a reference to a party includes its successors or permitted assigns;
- 1.1.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.1.4 any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.1.5 a reference to writing or written includes faxes and emails.

**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 Lavender International issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Lavender International which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Lavender International, and any descriptions or illustrations contained in Lavender International'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.
- 2.5 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 trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Lavender International shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.7 If either party requests a change to the scope or execution of the Services, Lavender International shall, within a reasonable time, provide a written estimate to the Customer of:
  - 2.7.1 the likely time required to implement the change;
  - 2.7.2 any necessary variations to Lavender International's charges arising from the change;
  - 2.7.3 the likely effect of the change on the Specification; and
  - 2.7.4 any other impact of the change on this agreement.

2.8 If the Customer wishes Lavender International to proceed with the change, Lavender International has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, the relevant Specification and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 13.8.

**3. SUPPLY OF SERVICES**

- 3.1 Lavender International shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 Lavender International shall use all reasonable endeavours to meet any performance dates specified in writing to the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.



- 3.3 Lavender International shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Lavender International shall notify the Customer in any such event.
- 3.4 Lavender International warrants to the Customer that the Services will be provided using reasonable care and skill.

#### 4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
  - 4.1.1 ensure that the terms of the Order are complete and accurate;
  - 4.1.2 co-operate with Lavender International in all matters relating to the Services;
  - 4.1.3 provide Lavender International, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Lavender International;
  - 4.1.4 provide Lavender International with such information and materials as Lavender International may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - 4.1.5 prepare the Customer's premises for the supply of the Services;
  - 4.1.6 inform Lavender International's employees of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and ensure the health and safety of Lavender International's employees whilst on site.
  - 4.1.7 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - 4.1.8 keep and maintain all materials, equipment, documents and other property of Lavender International (Lavender International Materials) at the Customer's premises in safe custody at its own risk, maintain Lavender International Materials in good condition until returned to Lavender International, and not dispose of or use Lavender International Materials other than in accordance with Lavender International's written instructions or authorisation;
  - 4.1.9 not [knowingly] present a Candidate for a Radiography Testing Course or exam who is pregnant. Local Rules state that if a Candidate is pregnant, she cannot take part in the Radiography Testing Course or exam. Candidates are reminded of the importance of informing their employer that they are pregnant in accordance with Regulation 14(c) IRR 1999. A Candidate should not present herself (or the Customer present the Candidate) for a Radiography Testing Course under these circumstances;
  - 4.1.10 not present a Candidate for the Radiography Testing Course or exam who is under the age of 18;
  - 4.1.11 not present a Candidate for the Magnetic Testing Course who is fitted with a pacemaker. Customers are responsible for ensuring the Candidates they place on the Courses are aware of this.
  - 4.1.12 adhere to the Health and Safety regulations and policies whilst attending Lavender International premises. This includes, but is not limited to, the wearing of PPE whilst working within practical training areas. Ensure therefore that the Candidate brings adequate safety shoes/boots for these occasions. Candidates will be asked to sign a Health and Safety undertaking when arriving on Lavender International premises.
- 4.2 If Lavender International'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 Lavender International shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays Lavender International's performance of any of its obligations;
  - 4.2.2 Lavender International shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Lavender International'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 Lavender International on written demand for any costs or losses sustained or incurred by Lavender International arising directly or indirectly from the Customer Default.

## 5. CHARGES AND PAYMENT

- 5.1 Lavender International shall invoice for the Charges on the Customer placing the Order where the Customer is self-sponsored. Lavender International shall invoice the Customer on completion of the Services in all other cases.
- 5.2 Where a discretionary deposit is taken any payment is non-refundable and non-transferable except in exceptional circumstances at the discretion of Lavender International.
- 5.3 A company booking will require a purchase order to secure the Order.
- 5.4 The Charges for the Services shall be on a time and materials basis:
- 5.4.1 the Charges shall be calculated in accordance with Lavender International's standard fee rates, as set out on the Website and in the company handbook;
- 5.4.2 Lavender International's standard daily rates for each Trainer are calculated on the basis of a maximum seven-and-a-half hour day worked on Business Days;
- 5.4.3 Lavender International shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Lavender International engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Lavender International for the performance of the Services, and for the cost and freight of any materials.
- 5.5 The Customer shall pay each invoice submitted by Lavender International:
- 5.5.1 within 30 days of the date of the invoice; and
- 5.5.2 in full and in cleared funds to a bank account nominated in writing by Lavender International, and time for payment shall be of the essence of the Contract.
- 5.6 Lavender International is entitled to ask PCN to revoke any certification where the relevant invoice has not been paid within the agreed period. No work should be carried out by Customers based on Certificates, Results Notices or Level 3 Contracts prior to payment of fees or issue of Certificates.
- 5.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Lavender International to the Customer, the Customer shall, on receipt of a valid VAT invoice from Lavender International, pay to Lavender International 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.
- 5.8 Without limiting any other right or remedy of Lavender International, if the Customer fails to make any payment due to Lavender International under the Contract by the due date for payment (**Due Date**), Lavender International shall have the right to charge interest on the overdue amount at the rate of two (2) per cent per annum above the then current Nat West base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Lavender International in order to justify withholding payment of any such amount in whole or in part. Lavender International may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Lavender International to the Customer.

## 6. CANCELLATION

- 6.1 Where Services are cancelled at short notice of less than 10 Business Days prior to the scheduled Services taking place, the Customer shall be responsible for paying the full Charges.
- 6.2 Where the Customer cancels the Services giving more than 10 Business Days' notice of the Services taking place, Lavender International shall charge an administration fee of £75.00.



**7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Lavender International.
- 7.2 Lavender International Materials are the exclusive property of Lavender International and must not be copied or reproduced without the express permission of Lavender International.
- 7.3 Lavender International hereby grants to the Customer a non-exclusive, royalty-free licence to reproduce the Lavender International Materials for the purposes they were created.
- 7.4 The Customer shall have no right to sub-licence the Lavender International Materials or allow any third party to use or reproduce the Lavender International Materials and any such use will amount to copyright infringement. The Customer agrees to notify Lavender International immediately if it becomes aware of any unauthorised use of the whole or part of the Lavender International Materials by any third party.
- 7.5 Any adaptation of the Lavender International Materials should be carried out by Lavender International. Any independent development of the Lavender International Materials is beyond the scope of the licence granted in clause 7.3 and such unauthorised development will amount to copyright infringement and a further fee shall become payable.

**8. CONFIDENTIALITY**

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 8 shall survive termination of the Contract.

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

- 9.1 Nothing in these Conditions shall limit or exclude Lavender International's liability for: death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.2 Subject to clause 9.1:
  - 9.2.1 Lavender International shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - 9.2.2 Lavender International's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Contract.
- 9.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.4 This clause 9 shall survive termination of the Contract.



## 10. COMPLIANCE WITH STATUTORY REQUIREMENTS

- 10.1 The parties shall:
- 10.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
  - 10.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 10.1.3 comply with Lavender International's Anti-corruption Policy, (as Lavender International or the relevant industry body may update them from time to time (**Relevant Policies**)).
  - 10.1.4 have and shall maintain in place throughout the term of the Contract policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies, and will enforce them where appropriate;
  - 10.1.5 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by that party in connection with the performance of this agreement; and
  - 10.1.6 immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of the party or acquires a direct or indirect interest in that party (and each party warrants to the other that it has no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract).
- 10.2 Breach of this clause 9.4 shall be deemed a breach of a material clause of these terms and conditions.
- 10.3 For the purpose of this clause 9.4, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7 (2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6 (5) and 6 (6) of that Act and section 8 of that Act respectively. For the purposes of this clause 9.4 a person associated with any party includes but is not limited to any subcontractor of that party.

## 11. TERMINATION

- 11.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 11.1.1 the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days; the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due; the other party commences negotiations with its creditors with a view to rescheduling any of its debts or enters into any compromise or arrangement with its creditors; a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (where a company); the other party (being an individual) is the subject of a bankruptcy petition or order; a creditor of the other party attaches or takes possession of the whole or any part of its assets; an application is made to court, or an order is made, for the appointment of an administrator over the other party; a floating charge holder over the assets of that other party (being a company) or other person becomes entitled to appoint or appoints an administrative receiver; any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the preceding events; the other party suspends or ceases to carry on all or a substantial part of its business; or the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs.
- 11.2 Without limiting its other rights or remedies, Lavender International may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 11.3 Without limiting its other rights or remedies, Lavender International shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and Lavender International if the Customer becomes subject to any of the events listed in clause 11.1 or Lavender International reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.



## 12. CONSEQUENCES OF TERMINATION

### 12.1 On termination of the Contract for any reason:

- 12.1.1 the Customer shall immediately pay to Lavender International all of Lavender International's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Lavender International shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 12.1.2 the Customer shall return all of Lavender International Materials which have not been fully paid for. If the Customer fails to do so, then Lavender International may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 12.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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; and
- 12.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 13. GENERAL

### 13.1 Force majeure:

- 13.1.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Lavender International including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Lavender International or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 13.1.2 Lavender International shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 13.1.3 If the Force Majeure Event prevents Lavender International from providing any of the Services for more than 20 weeks, Lavender International shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

### 13.2 Assignment and subcontracting:

- 13.2.1 Lavender International may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 13.2.2 The Customer shall not, without the prior written consent of Lavender International, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

### 13.3 Notices:

- 13.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 13.3.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and





at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

13.3.3 This clause shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

13.4 **Waiver:**

13.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

13.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

13.5 **Severance:**

13.5.1 If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

13.5.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.6 **No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

13.7 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.8 **Variation:** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Lavender International.

13.9 **Governing law and jurisdiction:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.