

## **Babcock LDP Shop – Terms and Conditions of Sale as at 13<sup>th</sup> July 2021.**

### **PLEASE READ THESE TERMS CAREFULLY BEFORE PLACING AN ORDER**

#### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 The following capitalised words apply to these Terms:
- 1.1.1 **Academic Year** means 00.01 hours 1st September to 23.59 hours 31st August;
- 1.1.2 **Financial Year** means 00.01 hours 1st April to 23.59 hours 31st March;
- 1.1.3 **A Service Level Agreement (SLA) / Academy Service Level Agreement (ASLA)** is a contract for annually pre-ordered services (consultancy or subscriptions) to be delivered across either a Financial Year or Academic Year.
- 1.1.4 **Babcock LDP** means Babcock Learning and Development Partnership LLP incorporated and registered in England and Wales with its registered office address at 33 Wigmore Street, London, W1U 1QX;
- 1.1.5 **Charges** means the charges for the Products and Services set out in the Order;
- 1.1.6 **Client** means a school, academy, setting or individual as set out in any Order.
- 1.1.7 **Confidential Information** means all confidential information (however recorded, preserved or disclosed (including without limitation whether in writing, in electronic format or given orally)) disclosed or made available, directly or indirectly, by the Disclosing Party on or after the date of these Terms.
- 1.1.8 **Disclosing Party** means a party to these Terms which discloses or makes available Confidential Information.
- 1.1.9 **Babcock LDP Shop** means the online system used by Babcock LDP to enable sales of Products and Services.
- 1.1.10 **Force Majeure Event** means an event or series of related events that is outside the reasonable control of the party affected to include but not limited to epidemic or pandemic (including but not limited to COVID-19), illness and/or shortage of staff, power failures, national industrial disputes, changes to the law, disasters, explosions, fires, floods, riots, terrorists attacks and war.
- 1.1.11 **IPR** means all intellectual property rights whether registered or unregistered including any application or right of application for such rights, copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, patents and rights in design.
- 1.1.12 **Order** means a purchase order or request for services from the Client to order the Products or the Services from the Babcock LDP Shop;
- 1.1.13 **Party** means jointly Babcock LDP and the Client and each a party.
- 1.1.14 **Products** means such products available via the Babcock LDP Shop.
- 1.1.15 **Services** means such services available via the Babcock LDP Shop.
- 1.1.16 **Terms** means these terms and conditions of sale.
- 1.2 In these Terms words importing the singular only shall also include the plural and vice versa and, where the context requires, words importing persons shall include firms and corporations.
- 1.3 These Terms shall be the only terms and conditions that shall apply to any Order and any pre-printed terms and conditions on any Order placed by the Client shall have no force or effect.

#### **2. SERVICE and PRODUCTS**

- 2.1 The Service and Products provided by Babcock LDP shall be such Services and Products as set out in Babcock LDP Shop and shall include and not be limited to such training, resources, digital downloads, conferences – and SLAs/ASLAs as specified on the Order.
- 2.2 Babcock LDP provides Services and Products to the Client for either the Financial Year or the Academic Year as set out in the Order.
- 2.3 Babcock LDP warrants that it shall provide the Services and Products with all due skill, care and diligence in accordance with good industry practice and (without limiting the generality of this condition) with its own established internal procedures.
- 2.4 Babcock LDP further warrants that all obligations shall be performed and rendered by appropriately experienced, qualified and trained staff.
- 2.5 Any unused Services or Products ordered by the Client can only be used within the Financial Year or Academic Year that they have been purchased and cannot be carried over at the end of the Financial Year or Academic Year and are non-refundable.

#### **3 CHARGES/PAYMENT**

- 3.1 The Charges payable by the Client for the provision of the Service and Products shall be as set out on the Order. All prices are exclusive of VAT and travel (where applicable).

- 3.2 The Charges are payable within thirty (30) days of issue of a valid invoice. Payment from the Client to Babcock LDP shall be by electronic means. Orders placed for the Financial Year will be invoiced annually at the beginning of the Financial Year. Purchases made for the Academic Year for Charges up to the value of £1500.00 +VAT will be invoiced annually at the beginning of the academic year. Orders placed for the Academic Year for Charges over the value of £1500.00 +VAT will be invoiced termly in advance. All termly invoices will be payable within 30 days of issue of a valid invoice.
- 3.3 Where relevant Charges are based on pupil numbers, Babcock LDP will use the most recently available school census data (full time pupil equivalent figure) as the number on the roll or where the Client has updated the pupil numbers on the Babcock LDP Shop.
- 3.4 Without prejudice to Babcock LDP right to claim costs under the Late Payment of Commercial Debts (Interest) Act 1998, if for any reason any payment is not made when due, Babcock LDP reserve the right to be paid on an indemnity basis any cost incurred in recovering any money due under these Terms (such costs to include but not be limited to administrative costs and any legal costs incurred).

#### **4 LIABILITY & INDEMNITY**

- 4.1 Except as provided in clause 4.3, the aggregate liability of Babcock LDP to the Client, whether under contract, tort (including, without limitation, negligence), statute or otherwise, arising out of or in connection with these Terms shall be limited to the Charges paid by the Client in the last Financial or Academic Year as appropriate.
- 4.2 Neither Party shall be liable to the other for any consequential, special or indirect losses and/or any and all loss of profit or anticipated profit, loss of product, loss of business, loss of production, loss of use or loss of efficiency, loss of revenue howsoever the same may be caused by, including without limitation, the fault, breach of contract, tort (including negligence), strict liability or otherwise of Babcock LDP or the Client as the case may be.
- 4.3 Nothing in this clause shall exclude or limit either Party's liability to each other for death or personal injury; or fraud or fraudulent misrepresentation or any liability which cannot be excluded under applicable law.

#### **5 INSURANCE**

- 5.1 A copy of the insurance policies held by Babcock LDP shall be made available on request.

#### **6 HEALTH AND SAFETY AND SECURITY & ACCESS**

- 6.1 Whilst on the Client's premises, Babcock LDP shall comply with all reasonable health, safety and security instructions given to it by the Client or any authorised representative of the Client.
- 6.2 Babcock LDP shall be afforded such access to the Client's premises, staff and facilities as may reasonably be required for the delivery of the Service.

#### **7 INTELLECTUAL PROPERTY RIGHTS ("IPR")**

- 7.1 Babcock LDP warrants that it is either the owner of or authorised to use any and all IPR in any of the Services and any Products provided under these Terms and grants a non-transferable, non-assignable, non-exclusive, revocable fully payable licence to the Client to use all IPR in any of the Services and any Products subject to the Client complying at all times with the following provisions:
- 7.1.1 the IPR in any of the Services and any Products provided will remain at all times the property of Babcock LDP and the Client is not entitled to any rights or interests in the IPR;
- 7.1.2 the Services and any Products provided under these Terms is at all times deemed Confidential Information of Babcock LDP and the Client will only use the Services and the Products in connection with providing the Services and shall not sublicense, assign or novate any of the Services to another company without the prior written consent of Babcock LDP.
- 7.1.3 the Services and any Products shall not be altered or adapted or edited or copied, modified, disassembled, de-compiled or reverse engineered at any time.
- 7.1.4 the Services and any Products shall only be used for their intended purpose, subject to these Terms.

#### **8 TERMINATION**

- 8.1 Once an Order is placed by a Client for Services or Products it shall only be entitled to terminate the Order and receive a refund in the following circumstances otherwise the Client will be liable to pay all of the Charges set out in the Order:-
- 8.1.1 For Orders covering only one Financial Year or Academic Year the Client will be required to give three months' written notice of termination of an Order. The Client will not receive a refund for any Services or Products committed as part of an Order which have not been used upon termination.
- 8.1.2 For Orders for a period longer than a year the Client will be required to give three months' written notice of termination of the Order, or any SLA provided under it, by 31<sup>st</sup> December or 31<sup>st</sup> May each year, which will then be effective from 1st April

or 1st September (depending on the start date of the original Order). The Client will be required to pay the difference between the full cost and the discounted amount for any year(s) completed. In the event that the Client fails to give notice Babcock LDP shall be entitled to charge a termination fee of 3 months' charges plus the difference between the full cost and the discounted amount for any year(s) to the Client.

- 8.1.3 For an Order for one-off bespoke products or services, the following graduated approach will be taken to refunds and charges: Should the Service or Products be cancelled by the Client prior to commencement, a cancellation notice must be provided in writing to Babcock LDP. The Client will be liable for the following cancellation fees which shall apply as a percentage of Charges; Less than 28 days (20%), less than 14 days (50%), less than 7 days (100%).

## 9 MAINTAINED SCHOOL CONVERSION TO ACADEMY STATUS

- 9.1 If the Client converts to academy status during the period of the SLA, any unused proportion will be calculated and refunded to the Client.
- 9.2 A new ASLA will then need to be placed and will start for the period from the date of academy conversion to the end of the current academic year. Invoicing will be as set out in Clause 3.

## 10 SUBSTITUTION/CANCELLATION BY BABCOCK LDP

- 10.1 In the event that the consultant(s) contracted to provide the Service is unavailable for any reason, Babcock LDP will endeavour to offer an alternative consultant.
- 10.2 Subject to clause 12, if a Service or Product has to be cancelled by Babcock LDP, Babcock LDP shall refund the Charge for the Service or Product, or offer an alternative Service or Product to the Client.
- 10.3 Subject to clause 10.2 and clause 12, if Babcock LDP is unable to provide the Service or Product on a face to face basis, it reserves the right to provide the Service or Product via an online method, subject to availability of online facilities and/or internet connection.

## 11 CONFIDENTIALITY

- 11.1 Each Party shall treat all information, marked as confidential or by its nature being deemed confidential, as confidential and safeguard it accordingly and shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of these Terms or except where disclosure is otherwise expressly permitted by the provisions of these Terms.
- 11.2 The provisions of this clause 12 do not apply to any Confidential Information received by one Party from the other (a) which is or becomes public knowledge (otherwise than by breach of this clause); (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party; (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; (d) is independently developed without access to the Confidential Information; or (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure.

## 12 FORCE MAJEURE

- 12.1 Neither party shall be in breach of these Terms nor liable for delay in performing or failure to perform any of its obligations under these Terms if due to a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of time for performing such obligations. If the period of delay or non-performance continues for four (4) weeks the party not affected may terminate these Terms by giving five (5) day notice to the affected party.

## 13 GENERAL PROVISIONS

- 13.1 The Client may not, without Babcock LDP's prior written consent, which shall not unreasonably be withheld or delayed, assign, transfer, or otherwise deal with or dispose of any of its rights or obligations accruing under these Terms. Babcock LDP may freely assign or transfer any of its interests, rights or obligations.
- 13.2 Babcock LDP warrants that it has in place appropriate security measures against unlawful or unauthorised processing of personal data and against loss or corruption of personal data in accordance with the terms of the Data Protection Act 2018.
- 13.3 Babcock LDP is Customer Service Excellence (CSE) accredited.
- 13.4 It is the intention of the Parties that no person who is not a party to these Terms shall have any rights to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 13.5 If any provision of these Terms shall be or become unenforceable, void or invalid, such provision or part thereof shall not affect and shall be deemed to be severed from the remainder of the provisions of these Terms and the remainder of these Terms shall continue to be fully enforceable and valid.

- 13.6 Each Party warrants that it has not done, and in performing its obligations under these Terms, it shall not do, any act or thing that contravenes the Bribery Act 2010 or any other applicable anti-bribery or anti-money laundering laws and/or regulations
- 13.7 These Terms supersede any previous Terms or arrangement between the Parties in respect of the Services and no variation of these Terms shall be made except with the written consent of the Parties. These Terms constitutes the entire understanding between the Parties relating to the Services and Products subject to an Order.
- 13.8 Any failure by Babcock LDP to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.
- 13.9 These Terms shall be governed by the laws of England and Wales and both parties shall submit to the exclusive jurisdiction of the English courts.

## 14 NOTICES

- 14.1 Any notice or communication given under these Terms shall be given in writing. Any notice given under or in connection with these Terms shall be regarded as properly served when delivered by hand or by post, to Second Floor, Milford House, Pynes Hill, Exeter, EX2 5GF or by email to BabcockEducationSW@babcockinternational.com.
- 14.2 In the case of the Client it is delivered by hand or by post to the address, or by email to the email address, of the Client who placed the Order.
- 14.3 In the event that the Client has any dispute Babcock LDP will seek to resolve all disputes. The Client should contact the Head of Support Services by phoning 01392 287333 or emailing [education.customercare@babcockinternational.com](mailto:education.customercare@babcockinternational.com).
- 14.4 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with these Terms within 30 days of either Party notifying the other of the dispute. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

## 15 SPECIAL TERMS RELATING TO SPECIFIC PRODUCTS OR SERVICES

### 15.1 The following clauses relate to School Libraries

#### Termination / Cancellation.

- 15.1.1 If the Client terminates a subscription and has already placed Order(s) for topic boxes then the Client will be liable for the Charges for the cost of all of the topic boxes.
- 15.1.2 If the Client terminates a subscription or Order, the Client must return all overdue books on or before the date 14 days after termination of the Order or subscription, failing which the Client will be charged for all overdue book returns.
- 15.1.3 In addition to the general provisions regarding termination in clause 8, if a school cancels an Order mid-year for Library Services then the school must return their book deposit at their cost and in accordance with directions issued by Babcock LDP.
- 15.1.4 In the case of a three year School Library Service, the discount offered for the 1st year (a 1/3 off the first year Charges for such service) will need to be repaid if the school cancels an Order at any point during the three years.

#### Expiry / non-renewal of contract/subscription

- 15.1.5 In the event of expiry or non-renewal of the contract and/or subscription, the Client is required to return all books currently on loan including any deposit books held on or before the date 14 days after expiry/non-renewal of the contract or subscription.
- 15.1.6 If the Client fails to return the book deposit in accordance with clause 15.1.5, the Client will be liable for the cost of the books.

### 15.2 The following clauses relate to Training and Conferencing (termination / cancellation).

- 15.2.1 For the purposes of clause 15.2 "Event" means conference, seminar, masterclass or training course.
- 15.2.2 For Event places the full event fee will be payable if a place is cancelled within 10 working days prior to the Event date.
- 15.2.3 Transfers cannot be made within 10 working days prior to the Event date.
- 15.2.4 If an Event place is cancelled more than 10 working days before the Event then the place can be transferred to an alternative Event, if available. Babcock LDP are only able to facilitate one such transfer.
- 15.2.5 Non-attendance of an Event place included within an SLA subscription or late cancellation (within 10 working days

prior to the Event date) will be subject to a £40 non-attendance fee.

- 15.2.6 Exhibitors must give at least 10 working days notice before the Event if they wish to cancel their exhibitor space, otherwise a refund will not be paid.
- 15.2.7 Whilst Babcock will make reasonable endeavours to provide training on a face to face basis where advertised, on occasion it may be necessary to provide the training by way of virtual means due to low attendee numbers and/or circumstances outside of Babcock's control, including but not limited to changes in Government guidelines relating to COVID-19.

**15.3 The following clauses relate to Digital resources / downloads and webinars.**

- 15.3.1 Train the Trainer digital resource is only available for the Client set out in the Order and the resource must not be provided or used by anybody else without the prior written consent of Babcock LDP.
- 15.3.2 By purchasing or downloading this webinar you agree:
  - not to record the session, including on an electronic device or via screen recording
  - that any audio and/or text contributions you make during the webinar may be recorded by us and used for training or other purposes including resale.

**16 UPDATES TO TERMS**

- 16.1 These Terms may be updated from time to time. Any changes will be posted and the terms will state the date when the terms were last revised. All continued use of the Services or Products after any such changes will constitute acceptance by the Parties of the revised terms for all Orders placed after the revised date.