

General Terms & Conditions - Training (v290110)

Definitions and Interpretation

1.1 In these General Terms and Conditions - Training, the following expressions shall have the meanings set opposite them, unless the context otherwise requires:

"Agreement" means these General Terms and Conditions - Training, any accepted Registration Form and any document which is supplemental hereto or which is collateral herewith or which is entered into pursuant to or in accordance with the terms hereof;

"Attendees" mean the person nominated by Customer as identified in the Registration Form;

"Course(s)" means such of the ESRI (UK) training courses described in the then current ESRI (UK) Training Schedule as are specified on the current course outline(s) or under course details on the ESRI (UK) website;

"Course Fee" means the charges set out in the then current ESRI (UK) Training Schedule payable by the Customer to ESRI (UK) for the Course(s);

"Customer" means the customer so named in the Registration Form;

"Registration Form" means the registration form which is expressed to be subject to these General Terms and Conditions and which relates to participation by Attendee on ESRI (UK)'s training Course(s);

"Portable Training" means provision of certain Courses by ESRI (UK) to Customer at Customer's premises where ESRI (UK) is to provide (for the duration of the Course) appropriate hardware (such as laptop, desktop and /or server) pre-configured with the software needed for the Course.

1.2 The headings are for convenience only and shall not affect the interpretation of this Agreement.

1.3 If a Customer comprises of more than one person or entity, all obligations of such Customer shall be joint and several as regards such persons and entities.

1.4 Reference to the singular includes the plural and vice versa and reference to a gender includes the other genders unless the context requires otherwise.

2.0 Registration

2.1 A Registration Form constitutes an offer by Customer to participate on the Course(s) specified in such Registration Form. Such offer shall not be deemed to be accepted by ESRI (UK) unless and until ESRI (UK) expressly confirms acceptance in writing.

2.2 These General Terms and Conditions shall apply to the Agreement to the exclusion of any other terms and conditions on which any purchase order is placed or purported to be placed by Customer.

2.3 No variation to the Registration Form or these General Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of ESRI (UK) and Customer. For the avoidance of doubt, no variation to the Registration Form agreed via telephone shall be binding unless confirmed in writing to Customer by ESRI (UK).

3.0 Price and Payment

3.1 The Course Fee is exclusive of any Value Added Tax, which shall be payable in addition by Customer at the rate then prevailing.

3.2 The Course Fee includes standard documentation appropriate to the relevant Course and unless delivered on Customer's premises or otherwise specified in the ESRI (UK) Training Schedule also includes light refreshments and buffet-style lunch.

3.3 For Course(s) delivered at Customer's premises ESRI (UK)'s reasonable expenses shall be chargeable at cost in addition to the specified Course Fee.

3.4 The time period scheduled for each Course allows for meal and refreshment breaks, questions on aspects of the Course content, however should the Course content be completed within the allocated time period resulting in an early finish, no adjustment will be made by ESRI (UK) to the Course Fee.

3.5 Unless otherwise agreed in writing between the parties, Customer shall pay the Course Fee:

- fourteen (14) calendar days prior to the relevant Course(s) commencement date or;
- if relevant course commencement date is within fourteen (14) days of first Registration, the course fee is due immediately

4.0 Cancellation and Transfer

4.1 ESRI (UK) reserves the right to cancel or re-arrange any allocated dates for Course(s) at any time and for any reason. If a Course is not rearranged by ESRI (UK) in agreement with Customer, ESRI (UK) shall provide Customer with a full refund of the relevant Course Fee paid by the Customer for the cancelled Course.

4.2 Customer may with ESRI (UK)'s agreement at no additional charge substitute an alternative Attendee.

4.3 Customer may transfer a nominated Attendee to another scheduled date for the relevant Course provided that ESRI (UK)'s agreement is obtained in writing at least ten (10) business days or such shorter period as ESRI (UK) may accept in advance of the scheduled Course commencement date.

4.4 Customer may cancel its registration for any Course by providing ESRI (UK) with a minimum of ten (10) business days' written notice. If Customer's notice for such cancellation is less than the minimum of ten (10) business days, the full Course Fee for such Course shall remain chargeable.

5.0 Duties of Customer

5.1 Customer is responsible for advance notification to ESRI (UK) (within the related section of the Registration Form) of any special requirements relating to the Attendee. ESRI (UK) will endeavour to accommodate such notified needs if it is considered both reasonable and practical to do so.

5.2 Customer shall ensure that Attendee shall have adequate competence, knowledge and skill to interpret and benefit from the Course(s) provided by ESRI (UK).

5.3 ESRI (UK) reserves the right to exclude Attendee from any Course due to Attendee's disorderly conduct or failure to fulfil the prerequisites as published by ESRI (UK) or otherwise notified to Customer. The relevant Course Fee shall remain chargeable to Customer in such circumstances.

5.4 In relation to Course(s) to be delivered by ESRI (UK) on Customer's premises:

5.4.1 if Portable Training is to be provided, Customer shall be responsible for ensuring that all reasonable and necessary accommodation and facilities, including a suitable room (with adequate Internet connection and power sockets) are fulfilled and maintained throughout the duration of the Portable Training;

5.4.2 if the Course does not involve Portable Training, Customer is responsible for ensuring that all reasonable and necessary facilities (including but not limited to the adequate provision of suitable accommodation, hardware, software and other reasonable requirements pre-notified by ESRI (UK)) are fulfilled and maintained throughout the duration of each Course;

5.4.3 the number of Attendees may not exceed a maximum of 12.

6.0 Travel and Accommodation

6.1 Customer is responsible for all travel arrangements, accommodation requirements and other costs incurred by Attendee relating to attendance at ESRI (UK)'s Course(s).

6.2 ESRI (UK) shall have no responsibility for any non-refundable costs arising under Clause 6.1 and resulting from Course(s) scheduling changes or cancellations howsoever arising.

7.0 Warranties and Liability

7.1 ESRI (UK) will use reasonable endeavours to ensure that the Course(s) provided are dispensed with reasonable skill and care and will follow practices consistent with the professional standards in the industry.

7.2 In relation to the provision of Course(s) by ESRI (UK) to Customer and subject to Clauses 7.4 and 7.5, ESRI (UK)'s total liability in contract, tort or otherwise shall not exceed 110% of the Course Fee paid by Customer for the Course in respect of which the claim is made.

7.3 Customer shall indemnify and hold harmless ESRI (UK), its officers, directors, agents and employees, from and against all claims, actions, demands, losses, costs, expenses (including, without limitation, all legal fees and disbursements), damages, liabilities and lawsuits arising from any breach of Customer's obligations under this Agreement.

7.4 Notwithstanding any other provision of this Agreement, ESRI (UK) does not accept liability for any loss of profits, or goodwill or for any special or indirect or consequential damages arising under this Agreement in delivering the Course(s).

7.5 Neither party excludes or seeks to limit its liability in respect of death or personal injury.

7.6 All conditions and warranties not expressly set forth in this Agreement and whether expressed or implied are excluded to the fullest extent permissible by law.

8.0 Intellectual Property Rights

8.1 The copyright in and all other intellectual property rights relating to the Course(s) software, data and documentation employed by ESRI (UK) and any related materials ("Course Materials") provided to Customer hereunder by ESRI (UK) are owned exclusively by and hereby reserved to ESRI (UK) and/or its party licensors. ESRI (UK) hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable licence to use such Course Materials solely for the purpose of receiving the Course(s).

8.2 Under no circumstances may the whole or any part of the Course Materials be produced or copied in any form or by any means or translated into another language by Customer without the prior written permission of ESRI (UK).

8.3 Customer shall not delete, amend, alter or deface any confidentiality or proprietary notices on the Course Materials.

8.4 The Customer shall and shall ensure that Attendee shall keep confidential the Course Materials and comply fully with all use restrictions notified to Customer by ESRI (UK) in relation to Course Materials.

9.0 General

9.1 ESRI (UK) reserves the right to amend the content of any Course(s) without notice to Customer when, in the opinion of the ESRI (UK), such amendment does not fundamentally change the content of such Course(s).

9.2 Neither party shall be held in breach of its obligations hereunder (except in relation to obligations to make payments) nor be liable to the other party for any loss or damage which may be suffered by the other party due to any cause beyond its reasonable control including, without limitation, any act of God, failure, interruption of power supplies, failure of a network(s), flood, drought, lightning or fire, strike, lockout, or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), environmental hazards, acts of terrorism, acts or omissions of Government, highway authorities or other circumstances beyond the control of the parties.

9.3 Any notice required or permitted to be given by either party to the other under these General Terms and Conditions shall be in writing and sent by facsimile transmission or delivered by hand or sent by first class post and addressed to:

9.3.1 if to ESRI (UK) at the address stated in the Registration Form (to the attention of the Training Department);

9.3.2 if to the Customer at the address given in the Registration Form

or such other address as may have been notified pursuant to this Clause 9.3 to the party giving the notice and shall be deemed received on actual receipt by hand or three (3) business days after posting or next business day after transmission if sent by facsimile.

9.4 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions and the remainder of the provision in question shall not be affected thereby. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the parties shall immediately commence good faith negotiations to remedy such invalidity, illegality or unenforceability or to achieve an alternative provision acceptable to both parties.

9.5 Neither party has relied on any representation or warranty except as expressly set out in this Agreement and ESRI (UK) and Customer hereby agree to submit to the exclusive jurisdiction of the English Courts in respect of any dispute in relation to this Agreement.

9.6 This Agreement shall be governed by and interpreted in accordance with the laws of England.

9.7 Save for the interests of ESRI (UK)'s third party licensor(s) in relation to their respective elements of Course Materials, nothing in this Agreement is intended to be for the benefit of and shall not be enforceable by any person who is not named at the date of this Agreement as a party to it and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply.