

## MEMBERSHIP TERMS AND CONDITIONS

### 1. These Terms

- 1.1 These Membership Terms and Conditions apply to your membership of EEF and to any and all services ("the Services") supplied by EEF to you as part of your membership subscription. Additional terms will apply to other EEF services.
- 1.2 These terms and conditions will prevail over any terms and conditions used by you or contained or set out or referred to in any documents sent by you to us.
- 1.3 If you have applied for membership or renewal, and your application for membership or renewal is accepted, EEF's acceptance of your membership is conditional on your agreement to these terms and conditions in full.
- 1.4 Following your application to become a new member, EEF will send a copy of these terms and conditions to you and you will be deemed to have accepted the terms in full unless you notify EEF that you would like to withdraw your application for membership within 14 days of the date on which EEF sends the terms and conditions to you.
- 1.5 These terms and conditions may be varied by EEF from time to time on three months' notice. In the event of any such variation EEF will post a new copy of the terms to its website and will send a revised copy of the terms to you by post or email. If you do not accept the revised terms and you notify EEF accordingly then the existing terms will apply up to the next renewal date or the date of termination of your membership (if earlier). If you renew your membership after EEF has notified you of changes then you will be deemed to have accepted the revised terms in full.

### 2. Membership Generally

- 2.1 Members of EEF are members of EEF Limited (reg. no. 05950172) a company limited by guarantee. Members are subject to the terms of EEF's constitution, in particular its Articles of Association ("the Articles"). In the event of any conflict between these Terms and Conditions and the Articles, the Articles will prevail. A copy of EEF's Articles are available at EEF's website [www.eef.org.uk](http://www.eef.org.uk)
- 2.2 Please note that, under the terms of the Articles: EEF may refuse membership to any prospective member for any reason; that membership is subject to continued payment of subscription fees; that your membership may be revoked for failure to pay subscription fees; that membership is not transferable; and that you are required to give six months' notice of termination of your membership.
- 2.3 Membership of EEF is generally provided in renewable subscription periods of 12 months (referred to in these terms as 'membership years'). Any new membership subscription will be subject to an initial minimum term of at least 12 months. After the initial minimum term you may terminate your membership on not less than six months notice in accordance with clause 5.1 below.

### 3. Subscriptions and Fees

- 3.1 In addition to EEF's right to revoke your membership for failure to pay subscription fees, during any period in which payments from you, whether for membership or any additional services, are overdue EEF may suspend all or part of the provision of any services to you.
- 3.2 All subscription fees are payable annually in advance, with payment options available via direct debit. Subscription fees are partly based on your annual wage bill. If during the course of a membership year your wage bill or number of employees increases by more than 30% then EEF reserves the right to levy an additional subscription fee for the remainder of the year in question. Given the nature of the services provided, EEF cannot provide a rebate in the event that your wage bill or number of employees reduces in any membership year. EEF reserves the right to revise your subscription fees upon any renewal of your membership.
- 3.3 In the event that any fees or charges whatsoever are due to EEF, or your subscription fee has been incorrectly calculated then you agree to settle any invoice for additional or unpaid fees rendered by EEF within 30 days of the invoice date without any set-off, deduction or counter-claim.
- 3.4 Members subscribe to EEF membership services through separate bundled service options ("Service Options"). For more information about what is and is not included within each Service Option please refer to our website. Please note that you will only be entitled to access those services which are included within a Service Option you have subscribed to. While your use of the services is not generally restricted certain services and service options are subject to our fair use policy as set out in clause 6.1.
- 3.5 If you wish to add a Service Option to your subscription during any membership year (or upon renewal if that renewal falls during any initial minimum term of more than 12 months) then you may be required both to pay an additional pro-rata amount for the remainder of the subscription period in question and to subscribe to both your original Service Option(s) and the additional Service Option(s) for a further period of at least one year.
- 3.6 All sums due from you which are not paid on the due date shall bear interest from day to day at the rate equal to 8% per annum above the Bank of England base rate from time to time both before and after judgement.
- 3.7 If EEF's staff or contractors are required to discharge out-of-pocket expenses in delivering Services to you those expenses will be charged to you as may be agreed from time to time. If the absence of any express agreement you

agree to pay all reasonable expenses incurred by EEF or their employees or contractors in carrying out services on your behalf.

- 3.8 All fees and charges are quoted exclusive of VAT unless otherwise specified.

### 4. Services

- 4.1 EEF will provide the services with reasonable skill and care. Unless expressly agreed in writing no further conditions, warranties or representations are given by EEF in relation to the services and any such terms are excluded to the fullest extent permitted by law.
- 4.2 Services will be provided to you, the EEF member, and not to any other third party. EEF will not be obliged to provide services to any third party nor will EEF accept any liability or duty of care to any third party whatsoever.
- 4.3 In order to allow EEF to provide the services you agree that you, together with your employees and agents will at all times:
  - a) provide EEF with complete, accurate and timely information, data and documents which may be requested;
  - b) co-operate fully with EEF in the provision of the services and permit EEF to provide the services free of obstruction and interference;

### 5. Termination of Membership

- 5.1 Your membership may be terminated by either party at any time on not less than six months notice, for any reason, following expiry of the initial minimum term of 12 months (or such longer minimum term as may be agreed). If you wish to terminate your membership then the earliest date on which you may terminate your membership is the date of expiry of your initial minimum term and in any event you must provide EEF with at least six months prior notice.
- 5.2 EEF shall be entitled to terminate your membership immediately in the event that you fail to make payment of any subscription or other fees which are due and payable or if you are otherwise in material breach of these terms and conditions.

### 6. Fair Use

- 6.1 Your access to services may be suspended or reduced in the event that, in the opinion of EEF, your use of the services is excessive or unreasonable having regard to (a) the subscription fees payable by you; and (b) the use of the services made by other members who have subscribed for the same Service Option(s) as you.
- 6.2 Your continued use of the services which have been suspended under clause 6.1 may be subject to payment of an additional subscription fee for the remainder of the membership year in question for continued use of that service together with such other conditions as EEF may specify.
- 6.3 By becoming a member of EEF you accept that the fair use policy set out above is reasonable given that EEF is a membership organisation committed to ensuring an equivalent level of service for all its members.

### 7. Policy, Representation and Publications

- 7.1 EEF will use its best endeavours to represent the interests of manufacturers generally. However no liability is accepted for such representation or for any policy position adopted by EEF.
- 7.2 EEF provides general advice, briefings, guides, information, training materials, blogs, website, surveys, model documents and newsletters ("the Publications") as part of various services provided. EEF will use reasonable endeavours to ensure that the information contained in the Publications is accurate at the time of publication but EEF does not provide any guarantee or warranty to that effect.

### 8. Advisory Services

- 8.1 If you have subscribed to any Service Option which includes advisory services ("Advisory Services") the following terms in this clause 8 will apply to those services.
- 8.2 EEF is authorised to provide legal advice to its members but is not regulated by the Solicitors Regulation Authority. The provision of legal advice does not amount to the formation of a solicitor-client relationship and EEF is not part of the solicitor's indemnity fund, although EEF does carry professional indemnity insurance.
- 8.3 None of our advice shall be used by any law firm or by any other adviser without our express written consent. EEF reserves the right not to comment on the advice provided by any other solicitor or adviser or by in-house staff, although a second opinion may be provided.
- 8.4 Unless your membership subscription includes EEF's *HR & Legal* and/or *Tribunals and Settlements* Service Options EEF will not generally communicate with any other party on your behalf or enter into settlement negotiations. EEF will not attend any Employment Tribunal or other hearing on your behalf unless you have subscribed to EEF's *Tribunals and Settlements* Service Option. Litigation support is not provided in relation to health and safety, environmental or other any legal matters or claims save to the extent these may be raised in an employment claim (and then only if you have subscribed to EEF's *Tribunals and Settlements* Service Option).
- 8.5 EEF may refuse to act for you on any matter if:
  - a) acting for you might give rise to a conflict of interest; or
  - b) two or more of EEF's members are separate parties to that matter; or
  - c) there is a risk of a breach of the Solicitors Code of Conduct or any other professional codes of conduct which apply to our advisers.
- 8.6 You are not entitled to disclose or publish EEF's telephone advice helpline numbers without EEF's express consent.
- 8.7 Advice provided on any matter will be based on the details and information outlined by your employee or agent to our help desk or advisor. If you are

concerned about a particular risk please notify EEF at the earliest opportunity. EEF also advise that you take written advice about areas of concern. EEF's maximum liability in relation to any telephone or general advice will (subject to clause 12.3 in relation to specific written advice and legal representation) for the avoidance of doubt, be limited to the subscription fees paid by you in the membership year in question.

- 8.8 Please note that while EEF will always provide advice via the helpline, EEF's advisors will not be obliged to attend disciplinary and/ or grievance meetings. However if attendance is appropriate to the matter and procedure EEF will endeavour to assist (subject to advisor availability).
- 8.9 EEF may agree to assist with disciplinary or grievance investigations (but this is not part of the Services supplied as part of your membership and will be subject to an additional fee). Please note that if EEF carries out or assists with such an investigation then:
- EEF will be acting independently in carrying out such investigation and no outcome or result is guaranteed;
  - Any report which EEF staff prepare following such investigation will not be privileged and may be used in tribunal or other proceedings;
  - The outcome of the investigation or report may lead to proceedings (and EEF will not be liable for any such outcome);
  - If litigation or proceedings are commenced which relate either to the circumstances investigated or to the investigation itself then EEF may be unable to act and if EEF do act an advisor from a different EEF region may be appointed by EEF to handle the case.
- 8.10 Please note that within your membership you will be eligible for prescribed quantities of publications and services (eg reviews). Additional quantities may be purchased at any time, for an additional fee.

## 9. Tribunals and Settlements

If you have subscribed to EEF's *Tribunals and Settlements Service Option* the following terms in this clause 9 will apply to such services.

- 9.1 If you wish EEF to represent you at an Employment Tribunal or other employment hearing you must inform us as soon as you are aware of a claim. If you notify EEF less than 3 days prior to the deadline for preparing a response to a claim then EEF reserves the right not to prepare the response, handle the claim or attend the hearing.
- 9.2 You also agree to supply EEF with all supporting documents and other information. Failure to do so may mean that EEF is unable to represent you at a hearing or prepare a response on your behalf.
- 9.3 If a proposed hearing is listed for more than 5 days or EEF estimates that the value of a potential claim is more than £100,000 or if EEF believes that it is otherwise in your best interests then EEF reserves the right to instruct a barrister at your expense. Any barrister will be appointed in consultation with you, however if EEF requests your consent to appoint a barrister and you refuse, then EEF reserves the right to cease acting for you in relation to that matter.
- 9.4 EEF reserves the right to charge for reasonable disbursements and costs including (but not limited to) the costs of retaining professional witnesses, travelling and sustenance expenses, copying charges, and the cost of any external barrister or counsel.

## 10. Third Party Services

- 10.1 EEF may from time to time select various partners (the "Partners") who agree to provide other services and products (the "Products") for its members.
- 10.2 EEF agrees that it will select Partners in good faith for the benefit of its members and EEF shall be entitled to take commission from its Partners in relation to Products sold to its members.
- 10.3 If you decide to purchase a product offered by a Partner then the agreement for the provision of that product or service will be between you and the Partner only. EEF offers no guarantee or assurance that the product or service will be suitable for your requirements or that it will be delivered as agreed and EEF shall have no liability whatsoever for any failure or default on the part of the Partner.
- 10.4 Please note that many of the Products offered are unique to EEF members and that if your membership with EEF is terminated for any reason your access to that Product will be terminated (and EEF will not be liable for termination of your access to that Product).

## 11. Staff and Contractors

- 11.1 EEF shall be entitled to subcontract, delegate or assign the provision of any services or any of their rights or duties under these terms. EEF shall have discretion as to which of their employees or self-employed agents, contractors or associates ("Associates") are assigned to perform the services.
- 11.2 You agree to pay EEF's introduction fee as set out in clause 11.3 in the event that you, any subsidiary, group or associated company or any person connected with you (directly or indirectly) recruit as an employee or engage as self-employed contractor any employee or Associate of EEF if that employee or Associate was involved in the provision of services to you by EEF in the 12 month period prior to their engagement by you.
- 11.3 In the event that you engage an employee or Associate of EEF as set out in clause 11.2 you agree to pay an introduction fee (which shall be immediately due and payable) equal to:
- Where you have engaged that individual as an employee: 50% of the annual remuneration (including pay and benefits) payable by you to the relevant individual in the year following the commencement of that individual's employment; or
  - Where you have engaged that individual, firm or company as a subcontractor, agent or associate:  
The higher of thirty (30) times the daily rate paid or payable by you to

that individual, firm or company for the services for which they are engaged or 50% of the total fees or other remuneration paid by EEF to that individual, firm or company in the 12 month period up to the date of their engagement by you.

## 12. Liability and Insurance

- 12.1 EEF will not be liable to you in any circumstances for any property damage or for any indirect or consequential loss or damage such as lost profit, lost opportunity, lost bargain, lost reputation, loss of anticipated savings or lost data whether caused by EEF's negligence, the negligence of their employees or agents or otherwise. EEF will not be liable to any party other than you, the member.
- 12.2 EEF's aggregate liability including the liability of their partners, agents, subcontractors and employees in respect of any services provided to you by EEF in connection with your membership will (except in relation to specific written advice or legal representation under clause 12.3) be limited to the annual subscription fee payable by you.
- 12.3 EEF's total liability to you for specific written advice or legal representation provided will be limited to 20 times the annual subscription fees payable by you, or £500,000 (whichever is the lower amount).
- 12.4 You accept that the limitations of EEF's liability set out above are reasonable in all the circumstances in particular given the disparity between the subscription fees charged by EEF and the potential risks to your business (which EEF is not in a position to evaluate), the availability of insurance to protect you against usual business risks and the numerous variables and uncertainties associated with many of the services which EEF provides. Nothing in these terms will limit or exclude EEF's liability for death or personal injury arising as a result of EEF's negligence.

## 13. Intellectual Property and Confidentiality

- 13.1 All intellectual property rights of any nature (including copyright) created or provided by EEF or its employees or Associates shall be and remain the property of EEF and any such materials shall be licensed to you for your internal use only.
- 13.2 You undertake to keep all Publications materials created by EEF confidential and not to copy, publish or distribute any such information, materials or documents to any third party without EEF's prior written consent (save where such information is in the public domain or you are required to disclose such information by law).
- 13.3 Each party agrees with the other not to divulge or allow to be divulged any confidential information relating to the other's business or affairs other than to its employees or subcontractors who need to know such information or where the other party has consented to such disclosure.
- 13.4 EEF shall be entitled to use any member's information in its general reports or for the purpose of collating information about its members and employers generally provided that EEF shall obtain your consent before publishing your name or information which allows you to be specifically identified.

## 14. General

- 14.1 Each of the parties warrants its power to enter into this agreement and has obtained all necessary approvals to do so.
- 14.2 EEF and the member are independent of each other and nothing in these terms shall be taken as creating a relationship of agent to principal, employer to employee, partnership or joint venture between EEF any other party. Neither party shall be entitled to enter into agreements or other arrangements on behalf of the other.
- 14.3 Neither party shall be liable to the other or be deemed to be in breach of these terms by reason of any delay in performing, or any failure to perform, any of their obligations in relation to these terms, if the delay or failure was due to any cause beyond their reasonable control such as severe weather, a natural disaster, strikes, governmental action, terrorism, war and civil unrest.
- 14.4 These terms represent the entire agreement between the parties and supersede any previous representations or agreements whether recorded in writing or otherwise (save in the event of fraud or fraudulent misrepresentation).
- 14.5 The parties agree that these terms are fair and reasonable in all the circumstances. However if any provision of these terms is held not to be valid by a court of competent jurisdiction but would be valid if part of the wording were deleted, then such provision shall apply with such deletions as may be necessary to make it valid. If any of the provisions in these terms are held not to be valid the remaining provisions of these terms shall remain in full force and effect.
- 14.6 Both parties agree that these terms shall not be enforceable by any person who is not party to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 14.7 By providing personal data relating to your employees or agents to us, you confirm that you are entitled to disclose that data to us under the terms of the Data Protection Act 1998 and related legislation and that we are entitled to process such data for the purposes of your membership and providing the Services.
- 14.7 Either party may give any notice to the other by sending it by post addressed to their registered address or by sending it to such electronic communications address as may be notified to the other from time to time. Changes to the terms of services provided or to these terms and conditions may be posted from time to time on EEF's website at [www.eef.org.uk](http://www.eef.org.uk).
- 14.8 These terms will be governed and construed according to the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.