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# DRAFT

## TERMS AND CONDITIONS

### 1. General

- (1) All Agreements for the supply of services and/or goods by XXXXX to any person, firm or company (the "Client") shall be subject to these terms and conditions which shall apply to the exclusion of any terms and conditions of the Client whether in the order (for the goods/services) or in any negotiation and supersedes any earlier terms and conditions appearing in the name of XXXXX unless expressly agreed in writing by a duly authorised representative of XXXXX.
- (2) The headings in these terms and conditions are for convenience only and shall not affect their interpretation in these terms and conditions.
- (3) References to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment, modification or statutory extension of any of the above.
- (4) No variation or amendment of these terms and conditions shall be made unless expressly agreed in writing by a duly authorised representative of XXXXX.
- (5) Where XXXXX is asked by a Client to undertake research or make an investigation or advise or assist on a project, the results whereof are intended by the Client to be used as evidence in any arbitration or litigation full disclosure of all the relevant circumstances must be made by XXXXX prior to Agreement.

### 2. Quotations

- (1) XXXXX shall sell and the Client shall purchase the goods and/or services in accordance with XXXXX's written quotation and subject to the terms and conditions.
- (2) Unless previously withdrawn, a quotation of XXXXX is open for a period of 30 days after the date of the quotation. No quotation shall constitute an offer or tender but shall be deemed to be an invitation to treat.
- (3) A Service Agreement shall be created only when XXXXX through a duly authorised representative has accepted in writing fax or e-mail an offer from the Client to purchase goods and/or to receive services (the "Project") such acceptance shall thereupon create an Agreement to be governed by these terms and conditions.
- (4) No employee, sub-contractor or agent of XXXXX has any authority to add to or vary these terms and conditions or to make any representation or warranty unless such addition, variation, representation or warranty is in writing and signed by a duly authorised representative of XXXXX.
- (5) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by XXXXX to the Client shall be subject to correction without any liability on the part of XXXXX.

### 3. Prices

- (1) All prices are quoted exclusive of Value Added Tax(VAT) or Goods Service Tax(GST) which is to be paid by the Client where applicable.
- (2) All quoted prices are exclusive of any travel-, hotel- and meal costs and all other unreasonable cost or expenses occurring during the project. The additional costs will be charged to the client and shall be paid by the client in line with Clause 4 hereunder.
- (3) XXXXX reserves the right in its absolute discretion to increase the price if the Client requests to XXXXX vary, modify or amend the Project or if the Client delays in any process of review of the Project or in the event of any rise in the cost of materials, labour, services, interest rates or statutory changes between the date of commencement of the Project and the date of completion.

### 4. Payment

- (1) Payment without set off or other deduction shall be made to XXXXX 14 days after the submission by XXXXX of the invoice to the Client. Payments shall be made in the Euro currency unless otherwise agreed in written. The time of payment of the price shall be of the essence of these terms and conditions.
- (2) The Client shall pay interest to XXXXX on overdue accounts or so much hereof as shall be overdue at the rate of 5% per month until the date of payment (whether before or after judgement) without limiting any other rights that XXXXX may have.

### 5. Performance of the Project

- (1) Any time given for performance of the Project is intended as an estimate only. Any request by the Client to vary, modify or amend the Project or any delay in any process of review of the Project with the Client may involve alteration of the estimated time for performance by XXXXX of the Project.
- (2) XXXXX shall not be liable in any circumstances for any damages or loss of any kind whatsoever arising directly or indirectly out of delay or failure to deliver or complete the Project.

(3) In the event that any goods or services supplied by XXXXX pursuant to the Project or any part thereof are found to be defective owing to faulty workmanship or materials and not arising from the Client's default, neglect or misuse, XXXXX will at its option, refund the price paid for or replace any goods forming a whole or any part of the goods supplied provided that XXXXX is notified in writing within 15 days of the discovery of any such defects and in any event not later than three months from the date of delivery and that such goods are returned carriage paid to such place as XXXXX shall direct. If a valid claim in respect of any defective goods is not received by XXXXX within this period, the client will have accepted the goods supplied unconditionally.

#### **6. Exclusion of Liability**

(1) The Client should carry out product, quality, health and safety tests and satisfy itself of the results of such tests before putting any product on the market based on any results produced by XXXXX as a result of a Project.

(2) Save as expressly set out in Clause 5(3) above, XXXXX shall not be under any liability to the Client whether in contract, tort or otherwise for any defect in, failure of or unsuitability of any goods supplied or advice given or results produced pursuant to the Project or for any consequential loss (including loss of profit, use or goodwill or similar financial loss), damage, claim or any other liability (howsoever caused) arising out of or in the course of or in connection with the Project, whether or not due to the negligence of XXXXX or its servants or agents. All conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with this clause are expressly excluded and restrict any liability of XXXXX for death or personal injury resulting from the negligence of XXXXX or its servants or agents.

(3) XXXXX shall not be liable to the Client or be deemed to be in breach of the terms and conditions by reason of any delay in performing, or any failure to perform, any of XXXXX's obligations in relation to the goods and services or performance of a Project, by reason of any supervening event beyond its control (including but not limited to was, national emergency, flood, earthquakes, strike or lock out, power failure or break down in machinery).

(4) The Client shall indemnify and keep XXXXX indemnified from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by XXXXX resulting from: (a) a breach of the contract by the Client including any act neglect or default of the Client's employees or agents; and (b) any claim made against XXXXX by any third party arising out of or in the course of or in connection with the Project, whether in negligence or otherwise.

#### **7. Risk**

Where XXXXX supplies any goods to the Client (whether or not the ultimate intention is that the goods be returned to XXXXX) the risk in such goods will pass on delivery to the Client.

#### **8. Title**

(1) Notwithstanding delivery and passing of risk in any goods supplied by XXXXX to the Client, XXXXX shall remain the owner of the goods until the Client has paid in full all sums due to XXXXX.

(2) Until ownership of the goods passes to the Client, the Client shall, while the goods remain on its premises or under its control, set them aside separately from other goods in its possession and shall identify the goods as the property of XXXXX.

(3) Until ownership of the goods passes to the Client, XXXXX shall be entitled to require the Client to re-deliver the goods to XXXXX and the Client shall be bound to do so immediately upon such requirement being made.

(4) Until ownership of goods passes to the Client, XXXXX or any person nominated by it shall be entitled to enter onto the Client's premises from time to time for the purpose of: (a) ensuring that the Client has complied with this Clause; and (b) re-possessing the goods.

(5) The Client shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are the property of XXXXX. Without prejudice to the other rights of XXXXX, if the Client fails to do so all sums whatever owing by the Client to XXXXX shall forthwith become due and payable.

(6) The Client shall insure and keep insured the goods to the full price against 'all risks' to the reasonable satisfaction of XXXXX until the date that property in the goods passes from XXXXX, and shall whenever requested by XXXXX produce a copy of the policy of insurance. Without prejudice to the other rights of XXXXX, if the Customer fails to do so all sums whatever owing by the Client to XXXXX shall forthwith become due and payable.

#### **9. Confidentiality and Information**

(1) The Client shall provide all necessary information in a reasonable timeframe to XXXXX needed for a good progress and result of the services provided.

(2) Either party may not disclose to any third party any information from both parties other than the disclosing party would normally freely disclose to the market at large, whether by publication, by presentation at seminars, or in informal discussions.

(3) The parties may wish, from time to time, in connection with work contemplated under the agreed Project, to disclose confidential information to each other ("Confidential Information").

(4) Each party will use reasonable efforts to prevent the disclosure of any of the other party's Confidential Information to third parties.

(5) The parties agree not to disclose any Confidential Information to third parties or to use any Confidential Information for any purpose other than performance of the services contemplated by the agreement, without prior written consent of both parties.

(6) Confidential Information does not include information that

- a) is or later becomes available to the public through no breach of the service agreement by the recipient.
- b) is obtained by the recipient from a third party who had the legal right to disclose the information to the recipient.
- c) is already in the possession of the recipient on the date this agreement becomes effective.
- d) is independently developed by recipient.
- e) is required to be disclosed by Hong Kong law, government regulation, or court order.

#### **10. Inventions**

(1) Unless otherwise agreed in writing prior to contract any discovery or invention or design (the "Invention") made, discovered or produced by XXXXX in the course of or arising out of the Project shall belong to XXXXX.

(2) From time to time, XXXXX may request that the rights in any Invention be assigned to XXXXX and the Client agrees to enter into such an assignment in the form provided to it by XXXXX, without cost to XXXXX.

#### **11. Copyright**

Unless otherwise agreed in writing, copyright (other than a design right in respect of an original design) in any plans, drawings, specification or other documents prepared by XXXXX in connection with or in the course of the Project shall belong to XXXXX. A design right as referred to in the Copyright Designs and Patents law of Hong Kong shall be dealt with in accordance with Clause 10 above.

#### **12. Client's Property**

Although all reasonable precautions are taken, any information or equipment supplied by or belonging to the Client will only be held at the risk of the Client, no liability being accepted by XXXXX for loss, damage, destruction or disclosure thereof.

#### **13. Dangerous Goods**

Any chemicals or other dangerous goods supplied to XXXXX for evaluation during the course of or in connection with a Project shall remain the property of the Customer and the Customer will be responsible for safe disposal at the Customer's expense. XXXXX will return the chemicals or other dangerous goods to the Customer upon completion of the evaluation or, at XXXXX's option, at any time prior to such completion and will charge the cost of carriage plus a reasonable charge by XXXXX for arranging carriage.

#### **14. Suspension**

In the event of the performance of any obligation accepted by XXXXX being prevented, delayed or in any way interfered with by either: (a) rules, regulations, requisitions or orders of the Government or Local Authority, war, riot, civil disturbance, strike, industrial action short of a strike, lock out, accident, fire or by any other cause beyond its control; or (b) shortage of labour or materials or non-delivery by XXXXX's suppliers or damage to or destruction of the whole or part of any goods to be supplied, XXXXX may at its option suspend performance or cancel its obligations under the contract without liability for any damage or loss of any kind whatsoever resulting there from such suspension or cancellation being without prejudice to XXXXX's right to recover all sums owing to it in respect of goods delivered at the date thereof.

#### **15. Employees**

During the continuation of the Project and for a period of 6 months after the completion thereof neither party shall without the prior written consent of the other directly or indirectly employ or engage any employee of the other or any person who has been an employee of the other during the period of 6 months prior to such employment or engagement and who has been concerned with or involved with the Project.

#### **16. Termination for Breach**

The following obligations are conditions of the contract and any breach of them shall be deemed a fundamental breach which shall entitle XXXXX to determine the contract immediately and the rights and liabilities of the parties shall thereafter be determined in accordance with Clause 17 below: (a) default in payment by the Client of any sum within 14 days of the invoice date; (b) where it appears that any research or investigatory work undertaken by XXXXX is to be used by the Client for the purpose of arbitration or litigation and full disclosure has not been made prior to contract; (c) failure on the part of the Client to comply with the terms of any notice specifying a breach of the contract and requiring the breach to be remedied so far as it may be but nothing in this Clause is intended to require XXXXX to serve notice of any breach before taking action in respect of it; or (d) if any distress or execution shall be levied upon any of the Client's assets or if the Client shall make or offer to make any arrangement or composition with creditors or commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against the Client or if any resolution or petition to wind up the Client shall be passed or presented (otherwise than for the purpose of a bona fide reconstruction or amalgamation) or if a receiver,

administrator or manager be appointed over any part of the Client's undertaking or assets or the Client can not pay its debts.

**17. Termination of services**

(1) Termination of services from XXXXX to the Client can be performed by both parties at any time in written notice and will become effective 7 days after the issue date of the written notice by fax or email.

(2) In the event of the contract being determined whether by performance of the Project breach or otherwise: (a) the Client shall immediately pay to XXXXX all sums due under the contract and all further sums which would but for the determination of the contract have fallen due upon performance of the Project; and (b) either party shall be entitled to exercise any of the rights and remedies given to it under the contract and the determination of the contract shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under the contract notwithstanding that the other may have exercised any of the rights and remedies against it.

**18. Competition**

1) Both parties confirm not to have any agreement with any other third party and in line with the services or products and markets as mentioned in the agreement, and will not enter into any such agreement during the term of this agreement.

2) The Client acknowledges and agrees, that no other to similar tasks from this agreement will or shall be discussed with any other consultant or service provider or any third party until termination of this agreement.

**19. Illegality**

If any term of the contract or any part thereof shall become or be declared illegal invalid or unenforceable for any reason whatsoever such term shall be divisible from the contract and shall be deemed to be deleted from the contract provided always that if such deletion substantially affects or alters the commercial basis of the contract the parties shall negotiate in good faith to amend and modify the terms of the contract as may be necessary or desirable in the circumstances.

**20. Proper Law**

The contract shall be governed and construed in accordance with the laws of Hong Kong and the Client agrees to submit to the exclusive jurisdiction of the Hong Kong courts.

**21. Arbitration**

If at any time any question, dispute or difference whatsoever shall arise between the Client and XXXXX upon, in relation to, or in connection with the contract, either may give the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to the arbitration of a person to be mutually agreed upon or failing agreement within 14 days of receipt of such notice, of some person appointed by the Hong Kong Law Society for the time being. According to the provisions of the Arbitration the decision of the arbitrator shall be final and binding on all parties.

**22. Notice**

A notice required or permitted to be given by either party to the other under this contract shall be in writing addressed to the other party at its registered office, principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

**23. Waiver**

No waiver by XXXXX of any breach of the contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

For Agreement,

THE CLIENT

Company :  
Name :  
Function :  
Date :

Signatures :