

# TERMS AND CONDITIONS OF SERVICE

## 1. Application

- 1.1 These Terms and Conditions shall apply to the provision of Services by the Service Provider to the Client.
- 1.2 In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Client or otherwise), the former shall prevail unless expressly otherwise agreed by the Service Provider in writing.

## 2. Definitions and Interpretation

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Agreement”</b>	means an agreement between the Service Provider and the Client entered into by the same which shall incorporate, and be subject to, these Terms and Conditions [and is attached hereto as Schedule 1];
<b>“Business Day”</b>	means a day (excluding Saturdays) on which banks generally are open for the transaction of normal banking business (other than solely for trading and settlement in Euros);
<b>“Client”</b>	means any individual, firm or corporate body (which expression shall, where the context so admits, include its successors and assigns) which purchases services from the Service Provider;
<b>“Commencement Date”</b>	means the commencement date for the Agreement as set out in the same;
<b>“Fees”</b>	means the fees payable by the Client under Clause 4 in accordance with the Terms of Payment;
<b>“Services”</b>	means the services to be provided by the Service Provider to the Client as set out in the Agreement;
<b>“Service Provider”</b>	means JWCI Limited (Process Engineering)
<b>“Terms of Payment”</b>	Means the terms of payment of Fees as set out in the Agreement.

- 2.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

- 2.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 2.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 2.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time;
- 2.2.4 a Schedule is a schedule to these Terms and Conditions; and
- 2.2.5 A Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.
- 2.2.6 A “Party” or the “Parties” refer to the parties to these Terms and Conditions.

- 2.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.4 Words imparting the singular number shall include the plural and vice versa.
- 2.5 References to any gender shall include the other gender.

## 3. The Services

- 3.1 With effect from the Commencement Date the Service Provider shall, in consideration of the Fees being paid in accordance with the Terms of Payment, provide the Services to the Client.
- 3.2 The Service Provider will use reasonable care and skill to perform the Services.
- 3.3 The Service Provider shall use all reasonable endeavours to complete its obligations under the Agreement, but time will not be of the essence in the performance of these obligations.

## 4. Fees

- 4.1 The Client agrees to pay the Fees in accordance with the Terms of Payment.
- 4.2 In addition the Service Provider shall be entitled to recover from the Client his reasonable incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services.
- 4.3 The Client will pay the Service Provider for any additional services provided by the Service Provider that are not specified in the Agreement in accordance with the Service Provider’s then current, applicable daily rate in effect at the time of the performance or such other rate as may be agreed. Any charge for additional services will be supplemental to the amounts that may be due for expenses.
- 4.4 All sums payable by either Party pursuant to the Agreement are exclusive of any value added or other tax (except corporation tax) or other taxes on profit, for which that Party shall be additionally liable.

## 5. Payment

- 5.1 All payments required to be made pursuant to the Agreement by either Party shall be made within 30 days of the date of the relevant invoice in sterling
- 5.2 The time of payment shall be of the essence. If the Client fails to make any payment on the due date then the Service Provider shall, without prejudice to any right which the Service Provider may have pursuant to any statutory provision in force from time to time, have the right to charge the Client interest on a daily basis at an annual rate equal to the aggregate of 8% and the base rate of Lloyds from time to time on any sum due and not paid on the due date. Such interest shall be calculated cumulatively on a daily basis and shall run from day to day and accrue after as well as before any judgement.

## 6. Confidentiality

- 6.1 Both the Service Provider and the Client shall undertake that, except as provided by sub-Clause 6.2 or as authorised in writing by the other Party, it shall at all times during the continuance of the Agreement and for 1 year after its termination:
- 6.1.1 keep confidential all Confidential Information;
  - 6.1.2 not disclose any Confidential Information to any other party;
  - 6.1.3 not use any Confidential Information for any purpose other than as contemplated by the Agreement;
  - 6.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
  - 6.1.5 Ensure that (as applicable) none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 6.1.1 to 6.1.4.
- 6.2 Subject to sub-Clause 6.3, either Party may disclose any Confidential Information to:
- 6.2.1 any of their sub-contractors or suppliers;
  - 6.2.2 any governmental or other authority or regulatory body; or
  - 6.2.3 any of their employees or officers or those of any party described in sub-Clauses 6.2.1 or 6.2.2;
- 6.3 Disclosure under sub-Clause 6.2 may be made only to the extent that is necessary for the purposes contemplated by the Agreement, or as required by law. In each case the disclosing Party must first inform the recipient that the Confidential Information is confidential. Unless the recipient is a body described in sub-Clause 6.2.2 or is an authorised employee or officer of such a body, the disclosing Party must obtain and submit to the other Party a written undertaking from the recipient to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 6.4 Either Party may use any Confidential Information for any purpose, or disclose it to any other party, where that Confidential Information is or becomes public knowledge through no fault of that Party.
- 6.5 When using or disclosing Confidential Information under sub-Clause 6.4, the disclosing Party must ensure that it does not disclose any part of that Confidential Information which is not public knowledge.
- 6.6 The provisions of this Clause 6 shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

## 7. Variation and Amendments

- 7.1 If the Client wishes to vary any details of the Agreement he must notify the Service Provider in writing as soon as possible. The Service Provider shall endeavour to make any required changes and any additional costs thereby incurred shall be invoiced to the Client.
- 7.2 If, due to circumstances beyond the Service Provider's control, it has to make any change in the arrangements relating to the provision of the Services it shall notify the Client immediately. The Service Provider shall endeavour to keep such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.

## 8. Termination

- 8.1 Either Party may terminate the Agreement by giving written notice to the other Party if:
- 8.1.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 30 days of the due date for payment;
  - 8.1.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 30 days after being given written notice giving full particulars of the breach and requiring it to be remedied;
  - 8.1.3 an encumbrance takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
  - 8.1.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - 8.1.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under this Agreement);
  - 8.1.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
  - 8.1.7 the other Party ceases, or threatens to cease, to carry on business; or
  - 8.1.8 Control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of this Clause 8, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 8.2 For the purposes of sub-Clause 8.1.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 8.3 In the event of termination under sub-Clause 8.1 the Service Provider shall retain any sums already paid to it by the Client without prejudice to any other rights the Service Provider may have whether at law or otherwise.

9. **Sub-Contracting**

Either Party may not sub-contract the performance of any of its obligations under the Agreement without the prior written consent of the other Party. Where either Party sub-contracts the performance of any of its obligations under the Agreement to any person with the prior consent of the other Party, the sub-contracting Party shall not be responsible for every act or omission of the sub-contractor as if it were an act or omission of the sub-contracting Party itself.

10. **Liability and Indemnity**

- 10.1 Except in respect of death or personal injury caused by the Service Provider's negligence, the Service Provider will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Service Provider's servants or agents or otherwise) in connection with the performance of its obligations under the Agreement or with the use by the Client of the Services supplied.
- 10.2 The Client shall indemnify the Service Provider against all damages, costs, claims and expenses suffered by the Service Provider arising from loss or damage to any equipment (including that of third parties) caused by the Client, or his agents or employees.
- 10.3 The Service Provider shall not be liable to the Client or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of the Service Provider's obligations if the delay or failure was due to any cause beyond the Service Provider's reasonable control.

11. **Force Majeure**

Neither the Client nor the Service Provider shall be liable for any failure or delay in performing their obligations under the Agreement where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

12. **Waiver**

- 12.1 No waiver by the Service Provider of any breach of the Agreement by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of the Agreement shall be effective only if given in writing and signed by the waiving Party and then only in the instance and for the purpose for which the waiver is given.
- 12.2 No failure or delay on the part of any Party in exercising any right, power or privilege under the Agreement shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude, any other or further exercise of any other right, power or privilege.

13. **Severance**

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and the Agreement, as appropriate). The remainder of these Terms and Conditions shall be valid and enforceable.

14. **Copyright**

The Service Provider reserves all copyright and any other rights (if any) which may subsist in the products of, or in connection with, the provision of the Services or facilities. The Service Provider reserves the right to take such actions as may be appropriate to restrain or prevent infringement of such copyright.

15. **Notices**

- 15.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 15.2 Notices shall be deemed to have been duly given:
  - 15.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
  - 15.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
  - 15.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
  - 15.2.4 On the tenth business day following mailing, if mailed by airmail, postage prepaid.In each case addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.
- 15.3 Service of any document for the purposes of any legal proceedings concerning or arising out of the Agreement shall be effected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time.

16. **Law and Jurisdiction**

- 16.1 These Terms and Conditions and the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 16.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.