

TERMS AND CONDITIONS OF BUSINESS

BSRIA Limited

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A private limited company registered in England No. 3942728

1 DEFINITIONS

- 1.1 **'The Company'** shall mean, BSRIA Limited and where the context permits, its employees, agents or subcontractors.
- 1.2 **'The Client'** shall mean, any person or persons, firm or corporate body that instructs, or is co-sponsor with, **The Company** to carry out test, investigations, consultancy, research consultancy or similar work.
- 1.3 **'Agreed'** shall mean, agreed between **The Client** and **The Company**.
- 1.4 **'Equipment'** shall mean, plant, machinery or other devices of any kind in respect of which **The Company** undertakes to carry out tests, make investigations or issue reports, certificates, information or advice.
- 1.5 **'Results'** are new and unique intellectual property generated as a consequence of a programme of work.
- 1.6 **'Deliverable'** shall mean any certificate, report, presentation, software or other **Results** arising from the operation of a contract to be supplied to **The Client**.
- 1.7 **'Proposal'** shall mean the offer for supply of services by **The Company** together with any agreed variations forming a **contract** between **The Company** and **The Client**.

2 GENERAL

- 2.1 These conditions shall apply to all work undertaken by **The Company** for **The Client** but are overridden by any explicit clauses contained within the **Proposal** for work. No additions or variations to these conditions shall apply unless agreed in writing between **The Client** and **The Company**.
- 2.2 **The Company** will conduct its business in accordance with professional standards and maintain a high standard of independence, objectivity, integrity and confidentiality.
- 2.3 **The Company's** terms and conditions shall prevail over all other terms and conditions received unless agreed by **The Company's** representative in writing.
- 2.4 If **The Client** is an agent acting on behalf of a principal, the obligations of **The Client** as set out herein may be transferred to the principal provided that **The Company** has agreed in writing to this arrangement before being given instructions to proceed with the work.
- 2.5 **The Company** reserves the right to decline to accept an order for work without being required to give a reason.
- 2.6 **The Company** provides information, advice and services in good faith based upon information available at the time. **The Company** accepts no liability for the consequences of its information opinions and advice whether direct or indirect.
- 2.7 The failure by either party to enforce at any time or for any period any one or more of the terms and conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.
- 2.8 Any disputes or claims shall be governed by and construed in accordance with English law and the jurisdiction of the English courts.
- 2.9 All unresolved disputes between the Parties shall be referred to arbitration in London before a single arbitrator to be appointed, in default of agreement otherwise, by the person for the time being of the President of the Institute of Arbitrators. Both parties also agree that all disputes arising with respect to this contract will be arbitrated upon within the English legal system.
- 2.10 Where conflict of interest does not exist and unless explicitly agreed within a **Proposal** for work **The Company** shall not be bound to decline to quote for or accept any offer for work from any source as a consequence of existing or proposed contracts.

3 FEES

- 3.1 **The fees payable by The Client will be in accordance with the schedule shown in the Proposal provided by The Company.**
- 3.2 Any variations to the work content will be agreed in writing by **The Company** and **The Client** and **The Company** reserves the right to provide a new schedule of fees against the new work programme.
- 3.3 Quotations shall be open for acceptance within 30 days unless agreed otherwise.
- 3.4 In the event of **The Company** agreeing with a representative of **The Client** to carry out any work without **The Client's** written acceptance of a quotation, then **The Company** shall be entitled to reasonable remuneration for the work performed.
- 3.5 Unless otherwise indicated in the **Proposal** **The Company** reserve the right to submit regular progress claims monthly in arrears.
- 3.6 Where expenses are to be charged in addition to a contract fee **The Client** agrees to reimburse **The Company** for all reasonable travel, subsistence and incidental expenses without further authorisation. In the case of expenses incurred abroad **The Company** will invoice in Sterling based on the actual exchange rate prevailing at the time of transaction.
- 3.7 **The Client** shall pay for all costs and charges incurred by **The Company** in collecting any **Equipment** for testing and in packing and returning the **Equipment** after testing.
- 3.8 Unless otherwise stated in the **Proposal** all transactions will be in Pounds Sterling. Both parties agree to accept this in respect of all invoices and payments. Unless otherwise explicitly provided by an individual contract, no account will be taken of any exchange rate fluctuations during the life of the contract. Each party accepts as their own responsibility the variation, whether favourable or unfavourable, that they may see in local currency terms in respect of the contract.
- 3.9 All quotations issued exclude VAT and local taxes unless otherwise stated, VAT and local taxes will be added at the rate ruling at the date the invoice is submitted.

4 PAYMENT TERMS

- 4.1 **Payment shall be made by The Client within 30 days of an invoice being submitted by The Company.**
- 4.2 Where it has been agreed that payment for all or part of a **contract** is to be made in advance work will not commence until payment is actually received as cleared funds.
- 4.3 **The Company** shall have the right to suspend all work or withhold **Deliverables** to **The Client** should payments not be made on time to the agreed schedule. Any adverse impact that this suspension has upon the completion schedule or the quality of the product for **The Client** shall be at **The Client's** sole responsibility. This right applies not just to the contract in arrears but also any other contracts with **The Client**, whether or not payments against these contracts are in arrears.
- 4.4 All invoices shall be paid without deduction. **The Company** does not accept retentions or un-negotiated discounting of any description.
- 4.5 In the event of an error or query on the invoice this should be notified to **The Company** without delay. A credit note will be issued to correct errors or omissions and payment of the net amount is then due.
- 4.6 **The Company** shall be entitled to charge interest on accounts outstanding for more than 30 days and for any sums unjustifiably withheld under clause 4.4 at 2% above the prevailing minimum lending rate of the Bank of England.
- 4.7 In the event of insolvency of **The Client** **The Company** will be entitled to have a general lien on all goods and property of **The Client** that is within **The Company's** possession and, following 14 days notice to dispose of such goods and property in such manner and at such prices as **The Company** thinks fit to apply the proceeds towards sums owing to the **The Company by The Client**.
- 4.8 **The Company** operates within the Inland Revenue rules in respect to the CIS5 certificate scheme. **The Company** holds a current certificate, which can be inspected at the registered office.
- 4.9 **The Company** Bank details are as follows, where all payments should be made by **The Client** unless otherwise agreed

Barclays Plc, PO Box 61, Bracknell, Berkshire, RG12 1GJ
Sort Code 20-11-74 Swift Code BARCGB22 Bank Account No.30231967

5 LIMITATION OF LIABILITY

- 5.1 **The Company** shall exercise all reasonable skill, care and diligence in the discharge of the duties performed and in producing any report, certificate, information or advice. However, **The Company** shall not be liable for any loss or damage, whether direct or indirect, arising from the use of reports, certificates, information or advice issued by it.
- 5.2 **The Company** shall not be liable for any damage, loss or expense suffered by **The Client** by reason of any delay in carrying out any test, investigation or consultancy or in issuing any reports, certificates, information or advice to **The Client**.

5.3 The liability of **The Company** for loss or damage to any **Equipment** on the premises of **The Company** by fire, theft or accident shall be limited to £100 or the cost of manufacturing such **Equipment** if less than £100.

6 OPERATION OF CONTRACT

6.1 **The Client** shall nominate a suitable representative from within his organisation to act as liaison between **The Client** and **The Company**.

6.2 All commitments with respect to the timing and scope of a project given to **The Client** by **The Company** - whether verbal or written are made in good faith. **The Company** agrees to use its best endeavours to fulfil such commitments to clients on the timing and the scope of consultancy and other projects but it does not guarantee performance in either respect.

6.3 Where the **Proposal** specifies that services will be provided by named individuals, **The Company** agrees to take all reasonable steps to ensure that these persons will remain on assignment for the full length of the contract.

6.4 Testing of **Equipment** will normally be carried out in accordance with the standards for the time being laid down by the British Standards Institution or other recognised authority. In the event of such standards not being applicable testing will be carried out according to a specification to be agreed before the commencement of the testing with **The Client**.

6.5 By arrangement tests may be witnessed by **The Client** or his representative, but **The Company** shall be entitled to charge for any additional costs thereby incurred.

6.6 **The Company** shall not bear any liability for any damage to the **Equipment** arising from or attributable to tests, investigations undertaken.

6.7 **The Client** shall indemnify **The Company** against any claim, loss, damage, or expense suffered by **The Company** or its employees or property or of **the Client** or Clients representatives as a result of undisclosed defects or dangerous or potentially dangerous features of **Equipment** submitted for test, investigation or consultancy. Disclosure of defects or dangers shall be made in writing to **The Company** prior to testing.

6.8 Except by prior arrangement **The Company** shall not be bound to accept delivery or agree to the collection of **Equipment** outside the hours of 8.30 to 17.00 on Mondays to Fridays, excluding public holidays.

6.9 **The Company** shall not be liable for any loss or damage resulting from the failure of **The Client** to give any special instructions regarding unpacking on the outside of each package or container.

6.10 **The Company shall not be liable for any losses which result from the failure of The Client to clearly identify any piece of Equipment submitted to The Company for testing, investigations or consultancy carried out in premises other than those of The Company.**

6.11 Where tests are to be carried out on site **The Client** shall be responsible for obtaining any necessary permission or permit for **The Company's** employees to have access to all relevant parts of the premises. **The Client** shall ensure that the owners or occupiers of the premises have insurances to cover any liabilities that may arise from injury to **The Company's** staff while on the premises, accidental damage to **Equipment** or property of **The Company** while on the premises, damage or injury to third parties caused by or resulting from the tests, investigations or consultancy of **The Company**.

7 TERMINATION

7.1 Any contract may be terminated by either party before completion by giving one month's notice in writing (except in the case of a membership contract which is six months). The Client will be responsible for any charges incurred or committed up to the date of termination on the quantum meruit basis.

7.2 Where an event caused by third party events outside either party's control or influence causes such delay that the purpose of the contract is wholly or significantly destroyed, either party shall be entitled in these circumstances to cancel the remaining portion of the contract. In such circumstances **The Client** will not make any further payments of fees but there will be no refund of payments already made (including any payments for that part of the contract that remains unfulfilled) and **The Company** will be entitled to recover any costs already incurred

7.3 **The Company** shall have the right to discontinue immediately all work for **The Client** should he or another person petition for his bankruptcy, or he be declared insolvent, or he be placed into administrative receivership or be generally unable to pay his bills as they become due.

8 USE OF DELIVERABLES

8.1 No Deliverable or abridgement, abstract or reference of same shall be used in any company prospectus, advertisement, or other publication or reproduced on the Client's products or on the packaging thereof without the prior written consent of **The Company**.

8.2 Certificates issued by **The Company** may be published by **The Client** or his Agent provided this is in full without and without modification.

8.3 Without the prior consent of **The Company**, no indication shall be given by any advertisement or by markings on **Equipment** or the packaging thereof or by any other means that implies approval, endorsement of products or services subjected to tests or investigations by **The Company**.

8.4 No **Deliverable** shall be used in any legal or arbitration proceedings without notification to **The Company**, except to the extent that may be required by law.

8.5 **The Company** reserves the right to make facsimile copies and to publish test certificates for the purpose of verification of authenticity by third parties.

9 COPYRIGHT & INTELLECTUAL PROPERTY

9.1 BSR/IA shall retain copyright in all reports, certificates, presentations or other material delivered in whatever form unless otherwise agreed in writing.

9.2 The source code version of any software program created and developed by **The Company** either alone or in conjunction with **The Client** shall be and remain the exclusive property of **The Company** and notwithstanding the release of the source code to **The Client**, which shall be at the absolute discretion of and upon terms determined by **The Company**. All confidential information and intellectual property rights in the source code shall remain vested in **The Company**.

9.3 **The Company** shall on request grant to **The Client** a non-exclusive licence to use the software programs and where appropriate the program documentation upon such terms as **The Company** shall in its absolute discretion determine.

10 CONFIDENTIALITY

10.1 **The Company** agrees to hold all information provided by **The Client** confidential where **The Client** so specifies, save where such information is known to **The Company** already, or exists already in the public domain, until, either the information enters the public domain, or **The Company** is given the same information by a third party, or is released from its confidentiality requirement by **The Client**, or **The Client** is found in breach of contract with **The Company** by a court of law (including non-payment of account) or three years have elapsed - whichever is the sooner.

10.2 **The Client** agrees to hold confidential all information contained within and concerning about **The Company's Proposal(s)**, fee structures, fees and personnel.

11 CONFLICT OF INTEREST

11.1 **The Company** will decline any new contract with a third party that would create a conflict of interest with **The Client's** previously **Agreed** instructions.

11.2 In the event that a conflict of interest becomes apparent during the conduct of work **The Company** will bring this to the attention of **The Client**. and **The Client** will then be free to vary the contract with **The Company** in the light of this revelation to the extent that it is affected by the potential conflict of interest. Such a declaration by **The Company** will be general in nature, so as not to prejudice the confidentiality with the third party. **The Company** will have the right to resign its contract in such circumstances if, in its judgement, it is unable to proceed with the contract and maintain its fiduciary duty. **The Company** shall receive payment in full for work undertaken and expenses incurred to the date of disclosure, including all due contract stage payments but not including any entitlement to pro-rata payment for any amounts payable on completion such as performance fees.

12 LIMITATION OF LIABILITY

12.1 Without prejudice to other more restrictive limitations elsewhere in this contract, liability on the part of **The Company** is limited to the value of the contract with **The Client** or the value of the loss whichever is the smaller. **The Company** accepts no liability for the consequences of its information, opinions and advice, whether direct or indirect.

12.2 Whilst **The Company** agrees to use its best endeavours to perform the contract for **The Client** as specified, **The Company** will not be responsible for any delays or failure to complete the contract which are beyond **The Company's** control and which could not have been reasonably predicted.

12.3 Neither party shall be liable to the other for any indirect, special or consequential damages

13 ILLEGAL ACTIVITIES

13.1 **The Company** will not carry out any illegal activities on behalf of **The Client** nor will it incite employees or subcontractors to act in breach of the law. Any requirement in this respect will nullify a contract and **The Company** will be entitled to recover in full its fee and expenses.

13.2 **The Client** agrees not to make any illegal use of any information provided by **The Company**.

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