

## 1 DEFINITION

1.1 In these Conditions, the following expressions shall have the following meanings:

“**Access**” means Access Services (HK) Limited (CR No: 2579141);

“**Conditions**” means these terms and conditions of Contract for the supply of Works and Maintenance Services;

“**Confidential Information**” means any and all information provided by either HIS or the Customer under the Contract that is either: (a) marked as being confidential; and/or (b) any and all information or data disclosed (whether in writing, orally or in any other form, and whether directly or indirectly) by one party to the other party, that is of a type that may reasonably be considered confidential, including without limitation, the terms and conditions of the Contract, any Specification, drawings, samples or other documents provided by a party in respect of the Works and the existence of the relationship between the Customer and HIS;

“**Contract**” means the contract between HIS and the Customer for the execution of the Works and/ or the provision of the Services, comprising:

- (i) these Conditions, together with any documents referred to herein; and
- (ii) the Works Order and any special conditions, Specification or other documents referred to therein.

“**Contract Price**” means the sum stated in the Works Order as being payable by the Customer to HIS in consideration of the execution of the Works and/ or the provision of the Services in accordance with the Conditions;

“**Control**” means the power of one person to direct the affairs of another whether by virtue of ownership of shares, contracts or otherwise;

“**Customer**” means the person, firm or company with whom the Contract is made by HIS, as is more particularly set out in the Works Order;

“**HIS**” means either Hargreaves Industrial Services (HK) Limited (CR No: 1611135) with its registered office at 36/F., Tower Two, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong or Access;

“**Hong Kong**” or “**HK**” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“**Insolvency Event**” occurs when:

(a) a resolution is passed or an order is made for the winding up of the other party (otherwise than for the purpose of solvent amalgamation or reconstruction); or

(b) the other party becomes subject to a winding up order; or

(c) a receiver or liquidator is appointed over the whole or part of the other party's business or any step is taken for the appointment of any such receiver or liquidator; or

(d) the other party is unable to pay its debts as they fall due within the meaning of Section 178 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance; or

(e) the other party, being an individual or partnership, is declared or adjudicated bankrupt or enters into any arrangement or composition with its creditors; or

(f) anything analogous to the events set out in sub clauses (a) to (e) occurs in any jurisdiction.

“**Intellectual Property Rights**” means any and all intellectual property rights protected under law anywhere in the world, including without limitation, patents, designs, copyright, trade marks, know-how, technical information, rights in data and database rights (whether registered or unregistered or any

applications for registration) whether now known or future;

**“Loss”** means any and all loss, damage, costs and expenses (including legal expenses and disbursements) arising from any and all liabilities, obligations, awards, actions, claims, demands and/or proceedings whatsoever and howsoever caused or arising and whether or not such losses were reasonably foreseeable at the time the Contract was made;

**“Machinery”** means any plant and/or machinery belonging to HIS and/or any third party under the Contract;

**“Maintenance Period”** means the period (if any) specified in the Works Order during which HIS is to provide the Services in respect of the Works Deliverables and/or any plant and/or equipment provided by HIS as part of the Works;

**“Maintenance Services”** means the support and maintenance services to be provided by HIS to the Customer during the Maintenance Period in respect of the Works Deliverables and/or any plant and/or equipment provided by HIS as part of the Works, as specified in the Works Order;

**“Services”** means as applicable the Works and/ or the Maintenance Services;

**“Site”** means the location where the Works and/ or Services are to be executed by HIS;

**“Specification”** means any specification set out in the Works Order;

**“Working Day”** means any day other than a Saturday, Sunday or public holiday in Hong Kong when licensed banks in Hong Kong are open for normal banking business;

**“Works”** means the engineering and/or construction works or services, and/ or general supply of labour and/or supply of Machinery to be performed and/ or provided by HIS (including

without limitation, the delivery of the Works Deliverables and the provision of the Maintenance Services) in accordance with the terms of the Contract, as more particularly set out in the Works Order;

**“Works Deliverables”** means all the plant, equipment, materials, structures, buildings, erections and/or any other deliverables to be provided by HIS in the course of executing the Works, as more particularly set out in the Works Order; and

**“Works Order”** means the Customer's order for the Works in the form attached to these Conditions.

1.2 In these Conditions:

1.2.1 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference 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 thereof;

1.2.2 the singular includes the plural and vice versa;

1.2.3 headings are for ease of reference only and shall not affect the interpretation or construction of these Conditions; and

1.2.4 any list of examples following the word including shall be interpreted without limitation to the generality of the preceding words.

- 1.3 The Conditions shall apply to all Works Orders made by the Customer for the Works and are the only Conditions upon which HIS is prepared to deal with the Customer. No terms or conditions endorsed upon, delivered with or contained in any documents submitted by the Customer to HIS shall form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms and conditions.
- 1.4 If there is any conflict between the provisions of, or documents forming, the Contract, the following order of prevalence shall apply (unless expressly stated otherwise in a Works Order):
- 1.4.1 firstly, the Works Order;
- 1.4.2 secondly, these Conditions; and
- 1.4.3 finally, any other documents referred to in the Works Order.
- 2 EXECUTION OF THE WORKS**
- 2.1 HIS shall carry out and complete the execution of the Works and/ or the provision of the Services in accordance with the Contract.
- 2.2 HIS shall undertake the Works and/ or the provision of the Services with reasonable skill and care and in accordance with any requirements set out in the Works Order and shall comply with all applicable laws.
- 2.3 HIS shall use reasonable endeavours to meet any performance dates specified in the Works Order but any such dates shall be estimates only and time for performance by HIS shall not be of the essence of this Contract.
- 2.4 HIS warrants to the Customer in respect of the Works Deliverables to be provided by HIS, that such deliverables shall be free of any material defects and shall comply with any agreed Specification for a period of six (6) months from the date of completion of the Works unless otherwise specified in the Works Order.
- 2.5 In respect of Works Deliverables provided by third parties HIS, shall use reasonable endeavours to procure that the Customer shall obtain the benefit of any third party warranty given to HIS.
- 2.6 For the avoidance of doubt, HIS is under no obligation to carry out any Works which are not within the scope of the Contract and/ or if there are to be additional Works, then HIS is entitled to charge the Customer for such additional works.
- 2.7 The Customer warrants and represents to HIS that:
- 2.7.1 it will provide, for HIS, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Site, premises, office accommodation, data and other facilities as reasonably required by HIS including any such access as is specified in a Works Order;
- 2.7.2 it will provide to HIS in a timely manner all document, information, items and materials in any form (whether owned by the Customer or a third party) required under a Works Order or otherwise reasonably required by HIS in connection with the Works and/ or the provision of the Services and ensure that they are accurate and complete;
- 2.7.3 it shall inform HIS of all health and safety and security requirements that apply at the Site;

2.7.4 it has, or will obtain prior to the commencement of the Works, all necessary licences, consents and permissions required for the execution of the Works;

2.7.5 it shall co-operate in good faith with HIS in all matters relating to the Works and/ or the provision of the Services and shall comply with the reasonable and lawful instructions of HIS;

2.7.6 it shall notify HIS of any relevant laws, regulations, consents and licences applicable to HIS in relation to:

- (a) its carrying out the Works and/ or the provision of the Services at the Site; and/ or
  - (b) the type of Works and/ or the provision of the Services contemplated under the Contract,
- HIS shall not be liable for any Loss suffered by the Customer in the event that the Customer fails to comply with the provisions of Clause 2.7.6.

2.8 If HIS's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors, consultants or employees then, without prejudice to any other right or remedy it may have, then HIS shall be granted an extension of time to perform its obligations equal to the delay caused by the Customer.

### **3 CONTRACT PRICE**

3.1 In consideration of the execution of the Works and/ or the provision of the Services by HIS, the Customer shall pay to HIS the Contract Price.

3.2 Unless otherwise agreed in the Works Order, the Contract Price excludes the following, which shall be payable by the Customer to HIS immediately following submission of an appropriate invoice by HIS:

3.2.1 the out-of-pocket costs and expenses reasonably incurred by the individuals whom HIS engages in connection with the Works and/ or the provision of the Services including travel and overnight stays; and

3.2.2 the cost to HIS of any materials or services procured by HIS from third parties for the provision of the Works and/ or the provision of the Services as such items and their cost are approved by the Customer in advance from time to time.

3.3 HIS shall invoice the Customer on completion of the Works as the provision of Service, unless otherwise agreed in the Works Order.

3.4 The Customer shall pay such invoices within thirty (30) days of the date of receipt to a bank account nominated in writing from time to time by HIS.

3.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay HIS any sum due under the Contract on the due date:

3.5.1 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base lending rate from time to time of the Hong Kong and Shanghai Banking Corporation until such payment has been made. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and

3.5.2 HIS may suspend part or all of the Works and/ or Services until payment has been made in full.

3.6 All sums payable by the Customer to HIS under the Contract

shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**4 INSURANCE**

4.1 Where applicable, HIS shall maintain all proper and adequate professional indemnity insurance as required, provided that such insurance remains available in the market on commercially reasonable rates and terms.

4.2 Unless expressly agreed otherwise, HIS undertakes no liability whatever in respect of any third party and or similar risks or for consequential damage of any kind and it is the Customer’s sole responsibility to have full insurance coverage within the Site. A copy of the 3rd party insurance policy, and where applicable any 3rd party motor liability insurance, shall be made available to HIS upon request (within 24hrs) and supplied prior to the provision of the Services.

**4.A TERMINATION FOR CAUSE**

4(A)1 Without prejudice to any other rights or remedies to which it may be entitled, HIS shall have the right at any time by giving notice in writing to the Customer to terminate the Appointment immediately if:

- 4(A)1.1 HIS fails to receive payment of any amount due by the Customer for the Works and/ or Services on the due date for such payment; or
- 4(A)1.2 there is any change of control of the Customer or the happening of any event which HIS considers could affect the financial viability of the Customer or the Customer’s ability to comply with its’ obligations herein; or

4(A)1.3 the Customer commits a material and/or persistent breach of any of the Conditions and (if the breach is capable of remedy) the Customer fails to remedy it within seven (7) days of receipt of notice in writing requiring remedy of the breach.

**4.B TERMINATION FOR CONVENIENCE**

4(B).1 Upon receipt of written notice from HIS of termination of the Contract for convenience, the Customer shall: -

- 4(B).1.1 cease operation as directed in the notice;
- 4(B).1.2 take all actions necessary, as directed in the notice, for the protection and preservation of the Machinery and the Work Deliverables; and
- 4(B).2 In case of such termination, HIS shall however be entitled to receive payment for all Services then provided.

**5 CONSEQUENCES OF TERMINATION**

5.1 Upon termination or expiry of the Contract, howsoever caused or occasioned:

- (i) the Services shall terminate automatically;
- (ii) HIS may enter the Site and take possession of the Machinery and/ or Work Deliverables.

5.2 The termination of the Contract however arising will be without prejudice to the rights and duties of either party accrued prior to termination or expiry. The Conditions which impliedly or expressly have effect or continue after termination or expiry will continue to be enforceable notwithstanding termination or expiry of the Contract.

**6 LIMITATION OF LIABILITY**

6.1 HIS shall not be liable to the Customer for any of the following:

- 6.1.1 loss of profits;

- 6.1.2 loss of business;
  - 6.1.3 loss of anticipated savings;
  - 6.1.4 loss of revenue;
  - 6.1.5 loss of opportunity;
  - 6.1.6 loss of contracts;
  - 6.1.7 loss of data;
  - 6.1.8 loss of goodwill or reputation;
  - 6.1.9 special, indirect or consequential loss; or
  - 6.1.10 delay in performing or any failure to perform its obligations under this Contract to the extent that such delay or failure was caused or contributed to by the act or omission of the Customer, and in each case whether arising under or in connection with this Contract, whether in contract, tort (including negligence) or otherwise, and irrespective of whether any of the above are direct or indirect loss or damage.
- 6.2 The limitations in Clause 6.1 shall not apply to any liability for death or personal injury caused by negligence; for fraud or fraudulent misrepresentation; or that cannot be excluded by law.
- 6.3 HIS shall not be liable under this Contract in respect of any individual claim (or a series of claims arising from substantially identical facts or circumstances) where the liability agreed or finally judicially determined in respect of such claim or series of claims does not exceed HK\$100,000.
- 6.4 The aggregate liability of HIS, whether in contract, tort, including for negligence, or for breach of statutory duty, howsoever arising, misrepresentation or otherwise in connection with this Contract, shall be limited to an amount equal to the total Contract Price to be paid by HIS to the Customer over the Contract in respect of the Works and/ or Services provided.
- 6.5 Any claim, from one party to the other, that the other party is liable for breach of any terms of the Contract shall be given by the claiming party, in writing to the breaching party, within 6 months after the relevant breach has been discovered by the party claiming such breach.
- 6.6 The Customer agrees to irrevocably indemnify HIS against any damage, loss, debt, or payment actually or directly borne or made by HIS to the Customer or any third party as a result of a breach of the Contract by the Customer, or any representations and warranties in these Conditions being untrue, inaccurate or misleading in a material respect.

**7 CONFIDENTIALITY**

- 7.1 Each of HIS and the Customer shall keep, and shall procure that their employees, agents, representatives and sub-Customers shall keep, in strict confidence, all Confidential Information received from the other party or which otherwise comes into its possession. Each party hereto shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-Customers as need to know it for the purpose of discharging its obligations under the Contract.

7.2 This Clause 7 shall apply during the continuance of the Contract and after its termination or expiry howsoever arising without limitation in time.

7.3 The Customer shall not, without the prior written consent of HIS, publicly announce or advertise in any form that it is providing services to HIS and/or its relationship with HIS pursuant to the terms of the Contract.

## **8 ASSIGNMENT AND SUBCONTRACTING**

8.1 The Customer shall not assign the whole or any part of the Contract or any interest in it without the prior written consent of HIS.

## **9 HEALTH AND SAFETY**

9.1 The Customer shall observe all health and safety rules and regulations that apply at the Site and/or in relation to the Services or indeed to the Works.

9.2 The Customer shall notify HIS as soon as it becomes aware of any health and safety hazards and/or failures to observe the health and safety rules and regulations and any other security requirements that apply at the Site and/or in relation to the Works and/ or Services.

9.3 The Customer shall provide all necessary supervision, having regard to the nature and extent of the Services, to secure the proper and safe execution of the Services in accordance with the Contract, including without limitation the provision of a competent and authorised agent skilled in the type of work being executed and approved by any appointed project manager and who shall be on the Site at all times while the Services are in progress.

## **10 GENERAL**

10.1 The Contract set out the entire agreement between HIS and the Customer is in relation to the subject matter hereof and supersedes any previous agreement relating to the subject matter of the Contract, whether written or oral. HIS and the Customer each acknowledge and agree with the other that in entering into the Contract, neither of them places any reliance on any representation or warranty in relation to the subject matter of the Contract, nor shall it have any remedy in relation to the subject matter of the same save as expressly set out in the Contract. The only remedy available to either HIS and or the Customer for breach of such warranties or representations shall be for breach of contract under the terms of the Contract. Nothing in these Conditions or in the Contract shall operate so as to exclude or restrict any remedy or liability for fraud or fraudulent misrepresentation.

10.2 Any notices to be given under the Contract shall be in writing and may be made or delivered by one party hereto to the other at the registered office of the party or to such other address as such party may have notified to the other party giving such notice for the purposes of these Conditions and shall be deemed to have been made or delivered by letter, when left at the address or, if sent by prepaid first class recorded delivery, forty-eight hours (48) after posting. If such notice arrives on a day which is not a Working Day, it shall be deemed to have been delivered on the next following Working Day.

- 10.3 HIS is appointed as an independent contractor and neither HIS nor the Customer shall have the authority to act in the name of or otherwise bind the other party in any way, whether contractually or otherwise.
- 10.4 If any provision of the Contract is held by any Court or other competent authority to be void or unenforceable, in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.
- 10.5 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies otherwise provided by law.
- 10.6 The failure of either HIS or the Customer to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor shall it operate to bar the exercise or enforcement of it at any time or times thereafter.
- 10.7 A person who is not a party to this Contract has no right under the **Contracts (Rights of Third Parties) Ordinance (Cap. 623)** to enforce any of its terms.
- 10.8 Save as expressly set out in this Contract, no variation of the Contract shall be binding upon either HIS or the Customer, unless the same is in writing signed by a duly authorised representative of both HIS and the Customer.
- 10.9 Any dispute or difference arising out of or in connection with operational matters between HIS and the Customer shall be referred to and finally resolved by arbitration through the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The number of arbitrators shall be one. The arbitration proceedings shall be conducted in English. The seat of arbitration shall be Hong Kong.
- 10.10 The Contract, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in all respects in accordance with the laws of Hong Kong, and the Hong Kong Courts shall have exclusive jurisdiction in all matters relating to the Contract, whether of a contractual or tortious nature or otherwise.

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