

**Terms and Conditions  
for the supply of scaffolding and manpower services  
(the ‘Terms and Conditions’)**

**WHEREAS**

The Client wishes the Service Provider to provide the Services to the Client.

The Service Provider has the ability to provide the Services in accordance with the Quotation.

The Service Provider now agrees to provide the Services in consideration of the Price.

In this respect, the Service Provider and the Client enter into the Contract in relation to the provision of Services as herein stated.

1. **Interpretation**

In these Terms and Conditions, and in the attached Quotation, if any, the following words and expressions shall, unless the context otherwise admits, have the following meanings:

‘Access’ means Access Services (HK) Limited.

‘Appointment’ means the appointment of the Service Provider to provide the Services herein, once the Quotation is accepted by the Client.

‘Client’ means the person, firm or company accepting the Appointment through acceptance of the Quotation.

‘Contract’ means the enforceable contract between the Client and the Service Provider, including the Quotation, the Terms and Conditions and the Regulations, which becomes legal binding as and when the Quotation is accepted by the Client and this shall specifically refer to the Appointment.

‘Hire Period’ means: -

**For Type A Services (Scaffolding Materials)**, the day the Scaffolding Materials are physically delivered to the Client, until the day when the Scaffolding Materials are returned to the Service Provider and the Service Provider has been able to inspect returned Scaffolding Materials to ensure that the Scaffolding Materials are in good repair, and that they are fit for purpose and that there is no undue damage to the Scaffolding Materials that have been returned to the Service Provider, with both days being included;

**For Type B Services (Labour Supply)**, the days on which the Manpower is provided to the Client, to work under the Client’s control and supervision will such Manpower cease the provision of the Type B Services (Labour Supply);

**For Type C Services (Scaffolding Service)**, a period that covers:

(1) the day on which the Scaffolding Materials are delivered to the Client, until the day after the Scaffolding Materials are returned to the Service Provider and the Service Provider has been able to inspect the same to ensure that the retained Scaffolding Materials are in good order, that the Scaffolding Materials are still fit for purpose and that there is no undue damage to what has been returned to the Service Provider, with both days being included; or

(2) the day(s) for which the Manpower is provided to the Client to work, but with the Manpower working under the Service Provider’s control and supervision.

‘Price’ means the fee that is agreed to be paid by the Client to the Service Provider for the Services rendered by the Service Provider pursuant to the Contract.

‘Service Provider’ means Access.

‘Hong Kong’ means the Special Administrative Region of Hong Kong, the Peoples Republic of China.

‘Manpower’ means all and any employees and or third party Clients that the Service Provider shall make available for the Appointment.

‘Project Manager’ means the person appointed by the Service Provider to oversee the provision of the Services.

‘Quotation’ means the offer from the Service Provider to the Client, in respect of the provision of Services to be accepted by the Client.

‘Regulations’ means all and any regulations, from time to time in force, under any **Hong Kong Ordinance** which affect or relate to the Service Provider’s provision of the Services.

‘Scaffold Structure’ means any structure to be erected by the Service Provider for the Client in accordance with the terms of the Quotation, or as the same may from time to time be varied in accordance with these Terms and Conditions.

‘Scaffolding Materials’ means all scaffolding and related materials, to be provided by the Service Provider to the Client, as detailed in the Quotation.

‘Services’ means one of more of the Type A Services (Scaffolding Materials), Type B Services (Labour Supply) and or Type C Services (Scaffolding Service), as are to be provided by the Service Provider to the Client under the Appointment.

‘Site’ means the site where the Services are to be performed under the Appointment.

‘Termination’ means one of the following: -

- (1) the termination of the Appointment which will be effective as and when the Hire Period expires; or
- (2) any termination as defined under Clause 12.

‘Type A Services (Scaffolding Materials)’ means a situation where the Service Provider provides Scaffolding Materials for the Client.

‘Type B Services (Labour Supply)’ means a situation where the Service Provider provides Manpower to the Client, such Manpower working under the Client’s control and supervision.

‘Type C Services (Scaffolding Service)’ means a situation where the Service Provider provides both Scaffolding Materials and Manpower to the Client, but with the Manpower working under the Service Provider’s control and supervision.

‘Working Day’ means any day other than Saturday or a Sunday or public holiday when licenced banks in Hong Kong are open for normal banking business.

Except where expressly stated to the contrary, all of the clauses in the Terms and Conditions apply to one or more of the Services to be provided by the Service Provider to the Client.

2. **Obligations of the Client**

2.1 On a prompt and efficient basis, the Client will supply the Service Provider with all of the relevant data and information available to enable the Service Provider to fulfil the Appointment and to provide the Services. The Client will also provide the Service Provider with all such assistance, decisions and access as may be reasonably required by the Service Provider and in sufficient time, to enable the Service Provider to fulfil the Appointment in accordance with any agreed timelines between the Service Provider and the Client.

2.2 The Client will pay the Service Provider the Price and, or any other sum due under the Contract. If the Client fails to pay any of the Price or any other sum due under the Contract, the Service Provider may, but without prejudice to any other rights and other remedies, forthwith terminate the Contract, and remove all its Scaffolding Materials from the Site where Type A Services (Scaffolding Materials) or Type C Services (Scaffolding Service) are being provided.

2.3 It shall be a condition precedent to the consideration of any claim by the Client against the Service Provider in respect of delay, and to the liability of the Service Provider for such delay, that written details of the alleged delay be sent to the Service Provider within seven (7) days of any occurrence thereof.

2.4 The Client will at all times implement and provide a proper and safe system of work for Manpower, in accordance with the health and safety legislation and Regulations as are then statutorily required in Hong Kong where further obligations are contained in Terms and Conditions below.

3. **Obligations of the Service Provider under the provision of all types of Services**

3.1 In the event that the Service Provider requests a variation to the Services the Service Provider shall notify the Client as soon as is reasonably practicable of the impact of such variation on the Price.

3.2 Where the erection, alteration or dismantling of the Scaffold Structure involves work on or adjacent to roofs or other fragile surfaces of any premises in respect of which the Scaffold Structure is

required, the Service Provider shall not be liable for any damage caused to such roofs or surfaces where such damage is inevitable if the Services is to be carried out by the Service Provider, nevertheless the Service Provider shall use its best endeavours to minimise the extent of any such damage. Subject as aforesaid the Service Provider shall be responsible for any injury or damage to the said premises only where such injury or damage can be shown to be caused by any negligence or wilful act or default on the part of the Service Provider, their servants or sub-Clients or other persons for whom the Service Provider are responsible; provided always that in any such case the Service Provider shall be notified within five (5) days (inclusive of any Saturdays, Sundays and or Hong Kong public holidays) of the occurrence of the injury or damage and shall be allowed to inspect the same and if thought fit themselves to arrange for its repair or making good.

3.3 If progress on or the completion of the Contract is delayed for any reason outside the control of the Service Provider a fair and reasonable extension of time for executing and completing the work shall be granted to the Service Provider.

3.4 The Service Provider agrees, in respect of the provision of Services and or Manpower in Hong Kong, to implement and effect all proper procedures as are then statutorily required in Hong Kong to comply with all health and safety legislation and Regulations in Hong Kong.

#### **4. Terms and conditions that apply to the provision to the Client of Type A Services (Scaffolding Materials)**

4.1 The Scaffolding Materials shall under all circumstances remain the property of the Service Provider during the Hire Period, title is not transferrable nor are the Scaffolding Materials capable of exchange, except with the Service Provider's prior written approval.

4.2 During the Hire Period, the Client shall maintain proper security over the Site and shall make good all damage and loss to the Scaffolding Materials, from whatever cause the same may arise, fair wear and tear excepted.

4.3 Any Scaffolding Materials lost or damaged above fair wear and tear (including but not limited to rusting, bending, cutting and welding) will be charged to the Client, as will all costs incurred by the Service Provider in cleaning and or removing concrete, debris, paint and other hard to remove materials from Scaffolding Materials on hire.

4.4 It is agreed that the Service Provider will at all times, on what it deems to be reasonable written notice to the Client, have the right to access and inspect the Scaffolding Materials, wherever those Scaffolding Materials may then physically be. In this respect, the Client agrees to enable the Service Provider to have such access and inspection rights. Further, the Client agrees that it will not do anything and will not take any steps which would then create any form of encumbrance or lien over the Scaffolding Materials, wherever those Scaffolding Materials might actually be.

4.5 At least 24 hours' written notice must be given to the Service Provider and then be accepted by the Service Provider in writing prior to the delivery and collection of Scaffolding Materials from or to the Client. Delivery and collection of Scaffolding Materials will not be conducted by the Service Provider on Sundays and Public Holidays.

4.6 All delivery and collection of Scaffolding Materials will be carried out by the Service Provider with loading and unloading within 50m besides the truck at the same level. An additional charge will be charged to the Client separately in accordance with the Quotation for any truck with a crane.

4.7 All Scaffolding Materials returned to the Service Provider must be sorted pack or rack in bundles by the Client by categories and then by dimensions (same manner as how the Service Provider delivered the Scaffolding Materials to the Client) ready for on Site collection by the Service Provider. Otherwise an additional charge will be charged to the Client separately in accordance with the Quotation.

4.8 In respect of the delivery and collection of any Scaffolding Materials, it is agreed that a delivery note and a collection note signed by an authorised representative of the Service Provider will, except for manifest error, be conclusive evidence as to the actual quantity and items of Scaffolding, received and or removed, on such delivery or collection, as appropriate.

#### **5. Terms and conditions that apply to the provision to the Client of Type B Services (Labour Supply)**

5.1 The Service Provider will exercise reasonable skill, care and diligence in the selection of the Manpower, for the performance of the Type B Services (Labour Supply). The Client acknowledges that the relevant Manpower supplied is to be solely under the Client's supervision and control. The Client will provide a safe system of work in accordance with all applicable Regulations and shall comply with the Service Provider's reasonable requests in connection with the Service Provider's duties in relation to the Manpower.

5.2 The Client shall indemnify the Service Provider against any loss, injury, damage or costs suffered, sustained or incurred by:

5.2.1 the Manpower in relation to any loss, injury, damage or costs arising out of any act or omission by the Client or its employees or agents; or

5.2.2 the Client, a third party, in relation to any loss, injury, damage or costs arising out of any act or omission of the Manpower during the Hire Period.

#### **6. Terms and conditions that apply to the provision to the Client of Type C Services (Scaffolding Service)**

6.1 The Scaffolding Materials shall under all circumstances remain the property of the Service Provider during the Hire Period, title is not transferrable nor are the Scaffolding Materials capable of exchange, except with the Service Provider's prior written approval.

6.2 During the Hire Period, the Client shall maintain proper security over the Site and shall be responsible for the loss of the Scaffolding Materials from whatever cause the same may arise.

6.3 The Service Provider will exercise reasonable skill, care and diligence in the selection of the Manpower, for the performance of the Type C Services (Scaffolding Service), where the Client acknowledges that the relevant Manpower supplied to be solely under the Service Provider's supervision and control.

6.4 The Service Provider will ensure that any Scaffold Structure is soundly and adequately constructed for the purpose requested by the Client and that when constructed it will comply with all applicable Regulations.

6.5 The Service Provider undertakes to remedy at its own expense any defects drawn to its attention in writing which have arisen from faulty design or erection by the Service Provider or from the use of defective Scaffolding Materials by the Service Provider except where expressly stated to the contrary.

6.6 The Service Provider shall comply with and shall require its employees and other sub Clients and their employees to comply with the Terms and Conditions regarding safety as set out in the Quotation and all other provisions as to safety which are to be observed by the Client or other sub Clients under all applicable Regulations.

6.7 Upon completion of the erection of the Scaffold Structure, the Service Provider shall upon request issue to the Client a 'Hand Over Certificate' stating that the Scaffold Structure has been supplied and erected in accordance with the Contract and that it complies with all Regulations including design requirements governing the design, erection, adequacy, stability and safety of Scaffold Structure. Where the Contract provides for the handing over of sections of Scaffold Structure such certificate shall be issued with reference to such sections upon their dates of completion.

6.8 Any repairs, additions, alterations, adaptations or variations required by the Client to the Scaffold Structure will be carried out by the Service Provider only upon receipt of written instructions from the Client and wholly at the Client's expense where quotations will be provided as quickly as possible. A separate Quotation will be submitted to the Client for any such work by the Service Provider. Quotations in cases where the work must be carried out, for example for safety purposes, will be deemed to be accepted by the Client within 24 hours of the Service Provider providing such quotation to the Client unless the Client provides a written response within the period indicating otherwise.

6.9 However, minor alterations to the Scaffold Structure as arising from time to time as requested by the Client in writing will be carried out on a day work rate basis by the Service Provider. Where any work is carried out on such basis the total number of hours booked shall be shown on the Service Provider's daily time records and countersigned by the Client's representative. Such hours will be chargeable at the day work rate as stated in the Quotation.

6.10 The Client fully understands and accepts the Service Provider is granted a right, exercisable as the Service Provider shall require, to have access to, and egress from the Site, for the purposes of accessing and inspecting the Scaffolding Materials.

6.11 Specifically in respect of the Client's obligations in this Clause 6, the Client agrees to irrevocably and unconditionally indemnify the Service Provider should there be any loss or damage caused to the Scaffolding Materials as a result of the Client's breach of obligations or negligence.

#### **7. Nature of the Appointment**

7.1 Neither the Service Provider nor the Client shall be regarded as an employee of the other nor shall any of the Manpower be regarded as an employee of the Client.

#### **8. Payment**

8.1 The Client will pay the Price promptly in accordance with the Quotation and in this respect, it is agreed that time is of the essence in respect of such payment to the Service Provider.

8.2 In the event of late payment of the Price by the Client, the Service Provider may (a) charge interest at a rate of 4% per month above the Hong Kong and Shanghai Banking Corporation base rate (from time to time) on all amounts remaining unpaid together with all other costs incurred by the Service Provider and, or (b) suspend the Services and, or dismantle and take back the Scaffolding Materials until payment of the arrears plus applicable interest is received in full, in cleared funds in which case all and any additional costs and expenses in that respect will be for the account of the Client.

8.3 If the Service Provider is required to do anything hereunder for the Client which is not specifically included in the Price then it is accepted that the Service Provider may invoice the Client for such services as soon as it has accepted those matters will be part of the Contract and the Client agrees to pay any such invoices upon receipt.

#### **9. Agreed Restrictions**

9.1 The Client covenants during the Appointment and for twelve (12) months after Termination not to solicit and or hire any of the Manpower that the Service Provider has employed for its provision of the Services or seek to by-pass, compete, avoid or circumvent the Service Provider from any business opportunity by utilising the Manpower provided.

9.2 If any Manpower is actually hired by the Client within the agreed 12 month non solicitation period, then an agreed conversion fee ('Conversion Fee') shall be payable by the Client to the Service Provider and that Conversion Fee shall be a sum equal to the higher of the Daily Fee for the remainder of the Hire Period, or a sum equal to 60 days' Daily Fee. If the hiring is effected during the 12 months following the expiry of the Appointment, the Conversion Fee shall be 60 times the Daily Fee. The Conversion Fee shall become due and payable on the day the Manpower commences employment or such other direct or indirect engagement with the Client. In the Service Provider respect the Daily Fee shall be HK\$2,000 for daily hires and HK\$3,000 for more senior hires being hired on a monthly basis by the Service Provider.

#### 10. Service Provider's Lien

10.1 The Client acknowledges that the Service Provider retains a lien over all Scaffolding Materials and other materials provided under the Contract, irrespective of whether they may be on its property and in the Service Provider respect, it acknowledges that such Scaffolding Materials of the Service Provider would typically be colour coded blue and or orange but in any event, the Client will ensure that such Scaffolding Materials and other materials provided are clearly identified as owned by the Service Provider.

#### 11 Insurance

11.1 Where applicable, the Service Provider 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.

11.2 Unless expressly agreed otherwise, the Service Provider 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 Client's sole responsibility to have full insurance coverage within the Site. A copy of the 3<sup>rd</sup> party insurance policy, and where applicable 3<sup>rd</sup> party motor liability insurance, shall be made available to the Service Provider upon request (within 24hrs) and supplied prior to the provision of the Services.

#### 12.A Termination For Cause

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

12(A)1.1 The Service Provider fails to receive payment of any amount due by the Client for the Services on the due date for such payment; or

12(A)1.2 there is any change of control of the Client or the happening of any event which the Service Provider considers could affect the financial viability of the Client or the Client's ability to comply with its' obligations herein; or

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

#### 12.B Termination for Convenience

12(B)1 Upon receipt of written notice from the Service Provider of termination of the Appointment for convenience, the Client shall: -

12(B).1.1 cease operation as directed in the notice;

12(B).1.2 take all actions necessary, as directed in the notice, for the protection and preservation of the Services, Manpower and the Scaffolding Materials; and

12(B).2 In case of such termination, the Service Provider shall however be entitled to receive payment for all Services then provided. .

#### 13 Consequences of Termination

Upon termination or expiry of the Appointment, howsoever caused or occasioned:

13.1 the Services shall terminate automatically;

13.2 the Service Provider may enter the Site and take possession of the Scaffolding Materials.

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 Terms and 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.

#### 14 Limitation of Liability

14.1 The Service Provider shall not be liable to the Client for any of the following:

14.1.1 loss of profits;

14.1.2 loss of business;

14.1.3 loss of anticipated savings;

14.1.4 loss of revenue;

14.1.5 loss of opportunity;

14.1.6 loss of contracts;

14.1.7 loss of data;

14.1.8 loss of goodwill or reputation;

14.1.9 special, indirect or consequential loss; or

14.1.10 delay in performing or any failure to perform its obligations under this Appointment to the extent that such delay or failure was caused or contributed to by the act or omission of the Client, 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.

14.2 The limitations in Clause 14.1 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. 14.3 The Service Provider 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.

14.4 The aggregate liability of the Service Provider, 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 Price to be paid by the Service Provider to the Client over the Hire Period in respect of Services provided.

14.5 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.

14.6 The Client agrees to irrevocably indemnify the Service Provider against any damage, loss, debt, or payment actually or directly borne or made by the Service Provider to the Client or any third party as a result of a breach of the Contract by the Client, or any representations and warranties in these Terms and Conditions being untrue, inaccurate or misleading in a material respect.

#### 15 Confidentiality

15.1 Each of the Service Provider and the Client shall keep, and shall procure that their employees, agents, representatives and sub-Clients 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-Clients as need to know it for the purpose of discharging its obligations under the Contract.

15.2 This Clause 15 shall apply during the continuance of the Contract and after its termination or expiry howsoever arising without limitation in time.

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

#### 16 Assignment and Subcontracting

16.1 The Client shall not assign the whole or any part of the Contract or any interest in it without the prior written consent of the Service Provider.

16.2 The Client shall not sub-contract the execution of the Services or part thereof without the prior written consent of the Service Provider.

#### 17 Health and Safety

17.1 The Client 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 Manpower.

17.2 The Client shall notify Service Provider 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 Services.

17.3 The Client 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 the Project Manager and who shall be on the Site at all times while the Services are in progress.

18 **General**

18.1 The Contract set out the entire agreement between the Service Provider and the Client us in relation to the subject matter hereof and supersedes any previous agreement relating to the subject matter of the Contract, whether written or oral. The Service Provider and the Client 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 the Service Provider and or the Client for breach of such warranties or representations shall be for breach of contract under the terms of the Contract. Nothing in these Terms and Conditions or in the Contract shall operate so as to exclude or restrict any remedy or liability for fraud or fraudulent misrepresentation. Any notice 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 Terms and 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.

18.2 The Client is appointed as an independent contractor and neither the Service Provider nor the Client shall have the authority to act in the name of or otherwise bind the other party in any way, whether contractually or otherwise.

18.3 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.

18.4 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies otherwise provided by law.

18.5 The failure of either the Service Provider of the Client 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.

18.6 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.

18.7 Save as expressly set out in this Contract, no variation of the Contract shall be binding upon either the Service Provider or the Client, unless the same is in writing signed by a duly authorised representative of both the Service Provider and the Client.

18.8 Any dispute or difference arising out of or in connection with operational matters between the Service Provider and the Client 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.

18.9 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.

October 2018