

## Terms and Conditions of Appointment for the Supply of Labour

You [**Name**] Limited of [**Address**] (“You”, “Your” or the “Customer”) acknowledge that in instructing Hargreaves Industrial Services (HK) Limited [**OR Access Services (HK) Limited OR Hargreaves Power Services (HK) Limited**] (“Service Provider”, “We”, “Our”, “Ours” or “Us”) to commence the supply labour services programme (the “Appointment”) described in Our attached quotation (the “Services”), You agree to the application of these below stated Conditions to the Appointment, to the exclusion of any other terms or conditions that may have been proposed by You. In this respect the place at which the Services are provided hereunder shall be deemed to be the “Site”.

### 1 Parties’ Obligation

1.1 The Service Provider has agreed to provide You with Services only and We will exercise reasonable skill, care and diligence in the selection of the actual labour for the performance of the Services and in respect of any specific programme agreed in writing in relation to the provision of the Services. You irrevocably acknowledge that all labour supplied by Us is to be under Your supervision and control in relation to the relevant programme and to all such work output required by You. In the event that You request a variation to the Services, We shall notify You as soon as is reasonably practicable of the impact of such variation on the cost of the Services and whether this also

requires a variation of the actual programme itself. We will not be liable to You, under any circumstances, for failure to provide labour, or as a result of the negligence, lack of skill or any other failure of or from the actual labour supplied to You.

- 1.2 You shall supply Us with all relevant data and information available to You in relation to the Services and You shall provide Us with all assistance and You will make all such decisions and provide Us with all such access, as may be reasonably required by Us, on an expeditious basis, to enable Us to perform the Services in accordance with any agreed programme.
- 1.3 The Service Provider will exercise reasonable skill, care and diligence in the selection of the Labour (“**Manpower**”), for the provision of the Services. The Customer acknowledges that the relevant Manpower is to be solely under the Customer’s supervision and control. The Customer will provide a safe system of work in accordance with all applicable regulations in force in Hong Kong from time to time and shall comply with the Service Provider’s reasonable requests in connection with the Service Provider’s duties in relation to the Manpower.
- 1.4 The Customer shall irrevocably and unconditionally indemnify the Service Provider against any loss, injury, damage or costs suffered, sustained or incurred by the Service Provider or by the Manpower or by any third party:

- 1.4.1 in relation to any loss, damage or costs arising out of any act or omission by the Customer or its employees or agents; or
- 1.4.2 in relation to any loss, injury, damage or costs arising out of any act or omission by the Customer during the Appointment.

## 2 **Payment**

2.1 Unless otherwise agreed in writing, We will issue invoices one (1) month in arrears for all Services performed during the preceding calendar month and We will then issue a final invoice on the termination or on the completion of the Services. We are required to give notice of payment to You under the Appointment, specifying the amount due, the notified sum and the basis on which the notified sum has been calculated. For the purposes of the Appointment, Our invoices are payment notices and the sums contractually due and payable to Us shall be the sums as set out in any such invoice except for manifest error. The due date for payment by You of any invoice shall be two (2) days following the date of issue of the relevant invoice.

2.2 In the event of late payment, We may charge You 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 You and/or we may suspend our provision of the Services, until payment of the arrears plus applicable interest is received by Us from You in cleared funds, without

prejudice to the provisions of Clause 6 below.

2.3 Signature by You of any timesheet or other similar record will acknowledge Your acceptance and satisfaction with the Services then provided, but failure on Your part to sign a timesheet will not absolve Your obligation to pay each and every invoice submitted by Us.

## 3 **Insurance**

3.1 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 Customer's sole responsibility to have full insurance coverage within the Site. A copy of the 3rd party insurance policy, and where applicable 3rd 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.

## 4 **Termination For Cause**

4.1 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 Customer to terminate the Appointment immediately if:

- 4.1.1 The Service Provider fails to receive payment of any amount due by the Customer for the Services on the due date for such payment where time is of the essence; or
- 4.1.2 there is any change of control of the Customer or the happening of any event which the Service Provider

considers could affect the financial viability of the Customer or the Customer's ability to comply with its' obligations herein; or

4.1.3 the Customer commits a material and/or persistent breach of any of the Terms and 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.

4.2 The Service Provider has the unfettered right to suspend its provision of the Services if there is any breach by the Customer of its obligations hereunder, including any failure to pay monies due and owing to the Service Provider on a timely basis.

## **5 Termination for Convenience**

5.1 Upon receipt of written notice from the Service Provider of termination of the Appointment for convenience, the Customer shall: -

5.1.1 cease operation as directed in the notice;

5.1.2 take all actions necessary, as directed in the notice, for the protection and preservation of the Services, Manpower and the Scaffolding Materials; and

5.2 In case of such termination, the Service Provider shall however be entitled to receive payment for all Services then provided.

## **6 Consequences of Termination**

6.1 Upon termination or expiry of the Appointment, howsoever caused or occasioned the Services shall terminate automatically;

6.2 The termination of the Appointment 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 by the Service Provider, notwithstanding termination or expiry of the Appointment.

## **7 Nature of the Appointment**

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

## **8 Limitation of Liability**

8.1 The Service Provider shall not be liable to the Customer for any of the following:

8.1.1 loss of profits;

8.1.2 loss of business;

8.1.3 loss of anticipated savings;

8.1.4 loss of revenue;

8.1.5 loss of opportunity;

8.1.6 loss of contracts;

8.1.7 loss of data;

8.1.8 loss of goodwill or reputation;

- 8.1.9 special, indirect or consequential loss; or
- 8.1.10 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 Customer, and in each case whether arising under or in connection with this Appointment, whether in contract, tort (including negligence) or otherwise, and irrespective of whether any of the above are direct or indirect loss or damage.
- 8.2 The limitations in Clause 8.1 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.
- 8.3 The Service Provider shall not be liable under this Appointment 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.
- 8.4 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 Appointment, shall be limited to an amount equal to the Contract Price then paid by the Customer to the Service Provider during the Appointment in respect of Services then provided.
- 8.5 Any claim, from one party to the other, that the other party is liable for breach of any terms of the Appointment 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.
- 8.6 The Customer 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 Customer or any third party as a result of a breach of the Appointment by the Customer, or any representations and warranties in the Conditions being untrue, inaccurate or misleading in a material respect.
- 9 **Agreed Restrictions**
- 9.1 The Customer covenants during the Appointment and for twelve (12) months after termination of the Appointment, howsoever occasioned, 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 so provided.
- 9.2 If any Manpower is actually hired by the Customer within the agreed 12 month non solicitation period, then an agreed conversion fee (**‘Conversion Fee’**) shall be payable by the Customer to the Service Provider and that

Conversion Fee shall be a sum equal to the higher of the Standard Day rate for the remainder of the Appointment, or a sum equal to 60 days' of such Standard Day rate. If the hiring is effected during the 12 months following the expiry of the Appointment, the Conversion Fee shall be 60 times the Standard Day rate. The Conversion Fee shall become due and payable on the day the Manpower commences employment or such other direct or indirect engagement with the Customer. In this respect the Standard Day rate shall be agreed at HK\$2,000 for daily hires and at HK\$3,000 for more senior hires being hired on a monthly basis by the Service Provider, irrespective of the rates stated in the Quotation.

#### 10 **Confidentiality**

10.1 Each of the Service Provider and the Customer shall keep, and shall procure that their employees, agents and representatives 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 Appointment.

10.2 This Clause 10 shall apply during the continuance of the Appointment and after its termination or expiry howsoever arising without limitation in time.

10.3 The Customer shall not, without the prior written consent of the Service Provider, publicly announce or advertise in any form that it is receiving the Services from the Service Provider and/or its relationship with the Service Provider pursuant to the terms of the Appointment.

#### 11 **Assignment**

11.1 The Customer shall not assign any of its rights hereunder.

#### 12 **Health and Safety**

12.1 The Customer shall observe all relevant health and safety rules and regulations that apply in relation to the Services or indeed to the Manpower.

12.2 The Customer 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.

12.3 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 Appointment.

#### 13 **General**

13.1 The Appointment sets out the entire agreement between the Service Provider and the Customer in relation to the subject matter hereof and supersedes any previous agreement

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

13.2 Any notice to be given under the Appointment 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 the 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, being a day when licenced banks in Hong Kong are open for normal banking business (“**Working Day**”), it shall be deemed to have been delivered on the next following Working Day.

13.3 The Customer is appointed as an independent contractor and neither the Service Provider 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.

13.4 If any provision of the Appointment is held by any Court or other competent authority to be void or unenforceable, in whole or part, the other provisions of the Appointment and the remainder of the affected provisions shall continue to be valid.

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

13.6 The failure of either the Service Provider or the Customer to exercise or enforce any right under the Appointment 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.

13.7 A person who is not a party to the Appointment has no right under the **Contracts (Rights of Third Parties) Ordinance (Cap. 623)** to enforce any of its terms.

13.8 Save as expressly set out in the Appointment, no variation of the Appointment shall be binding upon either the Service Provider or the Customer, unless the same is in writing signed by a duly authorised representative of each of the Service Provider and the Customer.

13.9 Any dispute or difference arising out of or in connection with operational matters between the Service Provider 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 a 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.

13.10 The Appointment, 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 Appointment, whether of a contractual or tortious nature or otherwise.

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