



## GENERAL TERMS AND CONDITIONS OF SERVICE

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Article apply in these general terms and conditions of service (the "**General Conditions**").

**Agreement:** the Company's acceptance of a completed Company Order Form or other instructions for Services from the Client, or Company's acceptance of an agreed quotation for Services under Article 2.2, or any instruction or request for services by a Client and subsequent acceptance by the Company and performance of Services by the Company for the Client. These General Conditions, as may be amended by the written agreement of the Parties, govern each Agreement unless separate terms and conditions are agreed to in writing between the Client and the Company.

**Background IPR:** any Intellectual Property Rights owned by each Party as at the commencement date of the Agreement or otherwise created outside the scope of the Agreement.

**Company:** BIVAC North America, Inc.

**Company Order Form:** the Company's standard form to be completed by the Client setting out the Services to be performed by the Company, together with any other information concerning the performance of the Services under the terms of the Agreement. The Fees for the Services may be set out in the Company Order Form or in a separate document or price list.

**Company's Equipment:** any equipment, systems or facilities, provided by the Company or its subcontractors which may be used directly or indirectly in the supply of the Services, and which are not the subject of a separate agreement between the Parties under which title passes to the Client.

**Client:** the person, firm, company, partnership, association, trust, or government agency or authority that purchases Services from the Company and as identified in the applicable Company Order Form or agreed written instruction.

**Client's Equipment:** any equipment, systems, or facilities provided by the Client and used directly or indirectly in the supply of the Services.

**Client Information:** all Documents, instructions, completed Company Order Forms, specifications, codes, requirements, samples, measurements and other information and materials provided by the Client necessary for the performance of the Services.

**Confidential Information:** all non public information passing between the Parties, including but not limited to data, know-how, designs, sketches, photographs, plans, drawings, specifications, layouts, ideas, concepts, reports, manuals, prototypes, trade secrets, trademarks, company logos, sources and object codes, business and marketing information, and all proprietary information whatsoever whether in writing or oral.

**Document:** includes, without limitation, in addition to any document in writing, any inspection sheet, report, certificate, attestation, mark, stamp, specification, code, drawing, map, plan, diagram, design, picture or other

image, tape, disk or other device or record embodying information in any form, including in computer or electronic format.

**Fees:** the fees which the Client is to pay for the Services, excluding all travel, subsistence and other incidental expenses of the Company and its permitted affiliates, agents, or sub-contractors as set out in the applicable Company Order Form or instructions from the Client and agreed by the Company in accordance with Article 2.2.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals, reversions or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Party and Parties:** individually the Company or the Client and collectively the Company and the Client.

**Reports:** all Documents and products created by the Company or its agents, subcontractors, consultants and employees in relation to the performance of the Services.

**Services:** the services to be provided by the Company to the Client under the Agreement and as set out in the applicable Company Order Form or in other instruction from the Client to the extent that they are agreed by the Company and incorporated into the Agreement.

- 1.2 In these General Conditions, a reference to:

1.2.1 an article or clause is a reference to an Article of these General Conditions;

1.2.2 the singular includes the plural and vice versa and reference to any gender includes the other genders;

1.2.3 a statute or statutory provision includes a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (whether before or after the date of the Agreement) and any prior or subsequent subordinate legislation made under it (whether before or after the date of the Agreement).

### 2. APPLICATION OF GENERAL CONDITIONS

- 2.1 Unless otherwise expressly agreed in writing and signed by both Parties, or solely to the extent otherwise required by mandatory application of law, these General Conditions shall:

2.1.1 apply to and be incorporated into the Agreement; and

2.1.2 prevail over any inconsistent terms or articles contained, or referred to, in Client Information, or implied by law, trade custom, practice or course of dealing.

- 2.2 A completed Company Order Form or other instruction by the Client, or the Client's acceptance of a quotation for Services by the Company, constitutes an offer by the Client to purchase the Services specified in it subject to these General Conditions. No offer placed by the Client shall be deemed accepted by the Company other than by a written acknowledgement issued and executed by the Company, at which point a contract for the supply and purchase of the Services subject to these General Conditions will be established.
- 2.3 For the avoidance of doubt, the Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any Company Order Form or other Document shall not govern the Agreement.
- 2.4 The Company shall not accept instructions in respect of the Services other than from the Client or from individuals representing the Client as identified in the relevant Company Order Form or as otherwise notified to the Company from time to time in writing by the Client.
- 2.5 The Company acts for the Client only. Except as provided in the Agreement or in a separate writing agreed by the Parties, the Agreement is entered into solely between and may be enforced only by the Client and the Company. The Agreement shall not be deemed to create any rights in third parties, including without limitation suppliers or customers of a Party, or to create any obligation of a Party to such third parties.
- 2.6 If the Client anticipates the use of any Reports in any legal proceeding, arbitration, dispute resolution forum or other proceeding, it shall so notify the Company in writing prior to submitting the Company Order Form for the Services and in any event prior to the use of such Reports in any such proceeding. The Parties agree that the Company has no obligation to provide an expert witness or witness of fact at such proceeding unless the Company gives its prior consent in writing, such consent being subject to the agreement of the Parties on a separate and additional fee in respect of such additional services.
- 2.7 The Company at its sole discretion may delegate the performance of all or a portion of the Services under the Agreement to an affiliate, agent or subcontractor of the Company without prior notice to the Client, and the Client hereby consents to such delegation. For the purposes of Article 8.1, the Client hereby consents to the Company disclosing any and all confidential information of the Client to such affiliate, agent or sub-contractor for the purposes only of performing the Services in whole or in part.

### 3. COMMENCEMENT AND DURATION

- 3.1 Unless otherwise agreed by the Parties, the Services performed under the Agreement shall be provided by the Company to the Client from the date of acceptance by the Company of the Client's offer in accordance with Article 2.2.
- 3.2 Subject to Article 10, the Services supplied under the Agreement shall be supplied for the period as set out in the agreed Company Order Form or other Client instruction as agreed by the Company. Where no such period for performance of the Services has been stipulated, the Company shall perform the Services in a reasonable time.

### 4. COMPANY'S OBLIGATIONS

- 4.1 The Company shall, with reasonable care, skill and diligence as expected of a competent body experienced in the certification, inspection, auditing and testing industry and in performing services of a similar nature under similar circumstances, provide the Services, and deliver the Reports to the Client, in accordance with:
- 4.1.1 the specific requirements as set out in the agreed Company Order Form or other Client instruction accepted by the Company and forming part of the Agreement;
- 4.1.2 such methods as the Company shall deem suitable on a case by case basis having regard to professional, industry standard, technical and/or government or regulatory grounds; and
- 4.1.3 any performance dates specified in the Company Order Form or other Client instruction as incorporated into the Agreement (such dates to be estimates only and time shall not be of the essence for performance of the Services).
- 4.2 The Company, in the capacity of an independent party, provides information to its clients in the form of ascertainment, assessment or recommendations, relative to regulatory requirements, general industry standards and/or any other standards that may be mutually agreed by the Parties.
- 4.3 The Company performs surveys, inspections, verifications, certifications, tests, assessments, audits or appraisals with independence, impartiality and objectivity. Such information is communicated to the Client in the form of the Reports, including inspection sheets, reports, certificates, attestations or marks, or by any other suitable means.
- 4.4 In providing the Services, the Company does not take the place of designers, architects, builders, contractors, manufacturers, producers, operators, transporters or owners, who, notwithstanding the Company's actions, are not released from any of their obligations of whatever nature. IN PARTICULAR, ANY INFORMATION AND RECOMMENDATIONS SUPPLIED BY THE COMPANY SHALL NOT BE HELD OR CONSTRUED TO AMOUNT TO APPROVAL OR ACCEPTANCE OF THE ITEMS IN CONNECTION WITH WHICH THE INFORMATION AND RECOMMENDATIONS ARE SUPPLIED OR OF THE QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.
- 4.5 For the avoidance of doubt, the Company does not fulfil the role of an insurer or a guarantor in respect of the adequacy, quality, merchantability, fitness for purpose, compliance or performance of products, services or other activities undertaken or produced by the Client to which the Services relate.
- 4.6 The Reports are given only in relation to documents and information provided by the Client. The Company cannot be held liable for any error, omission or inaccuracy in the Reports to the extent that the Company has been given erroneous or incomplete information by the Client. The Reports will identify the results of the Services performed by the Company based solely upon the written information provided to the Company as set out in the Client Information provided to the Company prior to the performance of the Services. Client will indemnify Company for any claim brought against Company due to the information provided by Client being inaccurate.

- 4.7 The Reports will reflect the findings of the Company at the time of performance of the Services only and in respect of the Client Information made available to the Company prior to performance of the Services. The Company shall have no obligation to update the Reports after issuance, except as otherwise stated in the Agreement.
- 4.8 Unless otherwise stipulated, the Company carries out its Services at random and does not perform any systematic and comprehensive examination. Consequently, the Services cannot be considered as exhaustive.
- 4.9 For those Services requiring sampling, the Reports will set out the findings of the Company solely in respect of the samples identified therein. Unless specifically and expressly indicated in the Reports, the results set out in such Reports may not be indicative or representative of the quality or characteristics of the bulk or lot from which a sample is taken, and the Client shall not rely upon the Reports as being so indicative or representative of the lot or of the tested product in general.
- 4.10 Unless specifically instructed to the contrary by the Client and incorporated into the scope of the Services under the Agreement, the Reports, including any other relevant information or document, relate to the facts as recorded by the Company within the limits of instructions received, and if appropriate state its opinion based on such facts. The Company is under no obligation to refer to or report upon any facts or circumstances which are outside the specific scope of its assignment or commission.
- 4.11 Unless specifically instructed to the contrary by the Client and incorporated into the scope of the Services under the Agreement, documents concerning undertakings entered into between the Client and other interested parties, such as contracts of sale, supply or work contracts, letters of credit, bills of lading, specifications, datasheets, letters of commissioning, certificates of acceptance or conformity, and which are divulged to the Company, shall be considered to be for information only, without either extending or restricting the Company's scope of Services or obligations under the Agreement.
- 4.12 Unless expressly agreed by the Parties to the contrary, the Company may, in its sole discretion, choose to retain, return to the Client or destroy samples which have been furnished to the Company for performance of Services and which have not been destroyed in the course of the Services.
- 4.13 To the extent required by law, stock exchange, governmental authority or for the purposes of accreditation requirements, the Company expressly reserves the right to disclose, and the Client consents to the disclosure of, the Reports, Client Information or any other information relating to the Services to a third party, including (but not limited to) courts, government bodies or accreditation bodies.
- 5. CLIENT'S OBLIGATIONS**
- 5.1 The Client shall:
- 5.1.1 co-operate with the Company in all matters relating to the Services;
- 5.1.2 where no such information has been agreed in the Company Order Form, advise the Company of the date on which the Services are to commence, or be resumed in case of suspension, and also of important dates affecting the item(s) to which the Services relate (however, time shall not be of the essence with respect to the performance of the Services);
- 5.1.3 provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Client's premises, office accommodation, data and other facilities and personnel as required by the Company;
- 5.1.4 except for generally available documents such as codes and standards, provide the Company, either directly or through its suppliers and subcontractors, in a timely manner, such Client Information and other information as the Company may require for the proper performance of the Services and ensure that it is accurate in all material respects;
- 5.1.5 provide the Company with all information and particulars concerning the use or purpose of the items in relation to which the Service is to be provided;
- 5.1.6 provide the Company, its agents and representatives with all necessary transportation, equipment, facilities, and access to premises where the Services are to be carried out;
- 5.1.7 be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any actual or potentially hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises;
- 5.1.8 adopt all necessary measures to ensure safety and security of working conditions on site during performance of the Services and inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises;
- 5.1.9 ensure that all of the Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant and applicable standards or requirements;
- 5.1.10 where necessary, obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the use of the Company's Equipment, the use of Client Information and the use of the Client's Equipment in relation to the Services insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment, in all cases before the date on which the Services are to start;
- 5.1.11 ensure that all documents, information and material made available by the Client to the Company under the Agreement do not and will not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret, licence or other intellectual property rights or proprietary rights of any third party; and

- 5.1.12 take all necessary steps to eliminate or remedy any obstructions to or interruptions in the performance of the Services.
- 5.2 The Client is responsible for exercising its own, independent judgment with regard to the information and recommendations provided by the Company. Neither the Company nor any of its agents warrant the quality, outcome, effectiveness or appropriateness of any decision or action undertaken on the basis of the Reports provided under the Agreement.
- 5.3 If the Company's performance of its obligations under the Agreement is prevented or delayed by any act, omission, default or negligence of the Client, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 5.4 The Client shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, attorneys fees and expenses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Agreement, subject to the Company confirming such costs, charges and losses to the Client in writing.
- 5.5 The Client shall not, without the prior written consent of the Company, at any time from the date of the Agreement to the expiry of twelve (12) months after the later of the last date of supply of the Services or termination of the Agreement, solicit or entice away from the Company or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.
- 5.6 The Client shall maintain at its own cost all applicable insurance policies with a reputable insurance company to cover the potential liabilities which the Client may have to the Company in connection with the Agreement.
- 6. CHARGES AND PAYMENT**
- 6.1 In consideration of the provision of the Services by the Company, the Client shall pay the Fees in accordance with this Article 6 unless otherwise agreed in writing between the Parties. The Fees and any additional charges are exclusive of all applicable taxes.
- 6.2 The Client shall pay each valid invoice submitted to it by the Company, in full and in cleared funds, within thirty (30) days of the date of the invoice. Once an invoice is issued the Company may contact the Clients' accounts payable service to verify that the invoice and deliverables are in conformity with this Contract.
- 6.3 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Company on the due date, the Company may:
- 6.3.1 charge interest on such sum from the due date for payment at the monthly rate of 1.5%, accruing on a daily basis and being compounded monthly until payment is made, whether before or after any judgment; and
- 6.3.2 suspend all Services until payment has been made in full.
- 6.3.3 Client shall reimburse Company for all reasonable costs and expenses of collection, including reasonable attorney's fees.
- 6.4 Time for payment shall be of the essence of the Agreement.
- 6.5 All sums payable to the Company under the Agreement shall become due immediately on its termination, despite any other provision. This Article 6.5 is without prejudice to any right to claim for interest under the applicable laws and regulations, or any such right under the Agreement.
- 6.6 Any Report, including test report or certificate, or any part thereof, may not be used or relied upon by the Client if and for so long as the Client fails to pay when due any invoice validly issued by the Company to the Client together with interest and penalties, if any, accrued thereon in accordance with this Article 6.
- 6.7 The Company may, without prejudice to any other rights it may have, set off any liability of the Client to the Company against any liability of the Company to the Client, whether such liability arises under this Agreement, or otherwise.
- 7. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION**
- 7.1 In providing the Client Information, the Client shall make available to the Company such of its Background IPR as is reasonable to assist the Company in carrying out the Services under the Agreement, provided that nothing in the Agreement shall oblige the Client to act in breach of any confidentiality obligation owed to any third party. The Client grants to the Company and its permitted affiliates, agents and sub-contractors a non-exclusive, royalty-free license to make use of such Background IPR for the duration of the Agreement for the purposes of carrying out the Services.
- 7.2 The Client warrants that to the best of its knowledge, information and belief, the use of its Background IPR by the Company in the provision of the Service will not infringe the Intellectual Property Rights of any third party.
- 7.3 The Client acknowledges that all intellectual property rights related to the performance of the Agreement, including but not limited to the names, service marks, trademarks, inventions, logos and copyrights of the Company and its affiliates, (collectively, the "**Rights**") are and shall remain the sole property of the Company or its affiliates and shall not be used by the Client, except solely to the extent that the Client obtains the prior written approval of the Company and then only in the manner prescribed by the Company. If the Company terminates the Agreement in accordance with the provisions of Article 10.1 below, any such licence granted by the Company to the Client shall automatically terminate. The Client shall not contest the validity of the Rights or take any action that might impair the value or goodwill associated with the marks or the image or reputation of the Company or its affiliates.
- 7.4 For the avoidance of doubt, ownership of each Party's Background IPR shall remain vested in the respective Parties at all times.
- 7.5 Each Party shall take all necessary steps to ensure that it operates at all times in accordance with all applicable data protection laws and regulations.

**8. CONFIDENTIALITY AND COMPANY'S PROPERTY**

- 8.1 Each of the Parties shall not disclose or use for any purpose whatsoever any of the confidential knowledge or Confidential Information or any financial or trading information which it may acquire or receive within the scope of the performance of the Agreement, without the prior written consent of the Party that disclosed the Confidential Information.
- 8.2 The confidentiality undertaking shall not apply to any information:
- 8.2.1 which is publicly available or becomes publicly available through no act of the receiving Party;
  - 8.2.2 which was in the possession of the receiving Party prior to its disclosure;
  - 8.2.3 which is disclosed to the receiving Party by a third party who did not acquire the information under an obligation of confidentiality;
  - 8.2.4 which is independently developed or acquired by the receiving Party without use of or reference to Confidential Information received from the disclosing Party;
  - 8.2.5 which is disclosed in accordance with the requirements of law, any stock exchange regulation or any binding judgment, order or requirement of any court or other competent authority; or
  - 8.2.6 which is disclosed to an affiliate of the Party on a need to know basis.
- 8.3 The Reports are issued by the Company and are intended for the exclusive use of the Client and shall not be published, used for advertising purposes, copied or replicated for distribution to any other person or entity or otherwise publicly disclosed without the prior written consent of the Company.
- 8.4 Each Party shall be responsible for ensuring that all persons to whom Confidential Information is disclosed under the Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized person or entity, and shall assume full responsibility for any breach of said undertaking.
- 8.5 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Client (including Company's Equipment) shall, at all times, be and remain as between the Company and the Client the exclusive property of the Company, but shall be held by the Client in safe custody at its own risk and maintained and kept in good article by the Client until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.
- 8.6 On expiry or termination of the Agreement for any reason and at the direction of the other Party, each Party shall return or destroy the other Party's Confidential Information which is at that time in its possession or under its control, provided, however, that nothing herein shall prohibit the Company from maintaining copies of Reports and analysis in accordance with its record retention policies and document retention policies as may be required by law or accreditation bodies.

**9. LIMITATION OF LIABILITY**

- 9.1 This Article 9 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its affiliates, and their respective employees, agents, consultants, and subcontractors) to the Client in respect of:
- 9.1.1 the Services and the Reports;
  - 9.1.2 any breach of the Agreement;
  - 9.1.3 any use made by the Client of the Services, the Reports or any part of them; and
  - 9.1.4 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement.
- 9.2 ALL WARRANTIES, ARTICLES AND OTHER TERMS IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY LAW, EXCLUDED FROM THIS AGREEMENT.
- 9.3 EXCEPT AS MAY OTHERWISE BE EXPRESSLY AGREED TO IN WRITING BY THE COMPANY AND NOTWITHSTANDING ANY PROVISION TO THE CONTRARY CONTAINED HEREIN OR IN ANY WORK PRODUCT OF THE COMPANY, NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, IS MADE.
- 9.4 Nothing in these General Conditions limits or excludes the liability of the Company:
- 9.4.1 for death or personal injury resulting from negligence; or
  - 9.4.2 for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Company; or
  - 9.4.3 for any other loss which by law cannot be excluded or limited.
- 9.5 Subject to Articles 9.2 through 9.4:
- 9.5.1 THE COMPANY AND ITS AFFILIATES, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS, SHALL NOT BE LIABLE FOR:
    - (a) LOSS OF PROFITS OR REVENUES; OR
    - (b) LOSS OF BUSINESS, INCLUDING, BUT NOT LIMITED TO, LOSS BY REASON OF PARTIAL OR COMPLETE PLANT OR EQUIPMENT SHUTDOWN, NON-OPERATION OR SERVICE INTERRUPTION; OR
    - (c) DEPLETION OR LOSS OF GOODWILL AND/OR SIMILAR LOSSES; OR
    - (d) LOSS OF ANTICIPATED SAVINGS; OR
    - (e) LOSS OF GOODS; OR
    - (f) LOSS OF CONTRACT OR OPPORTUNITY; OR
    - (g) INCREASED EXPENSE OR COST OF OPERATION, CONTRACT OR OPPORTUNITY; OR

- (h) LOSS OF USE OF PROPERTY, GOODS, CAPITAL OR REVENUE; OR
- (i) LOSS OR CORRUPTION OF DATA OR INFORMATION; OR
- (j) ANY COSTS, DAMAGES, OR LOSS INCURRED IN CONNECTION WITH A PRODUCT RECALLS OR REPLACEMENTS; OR
- (k) DAMAGE TO THE CLIENT'S REPUTATION; OR
- (l) ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR PURE ECONOMIC LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES.

9.5.2 THE TOTAL LIABILITY OF THE COMPANY AND ITS AFFILIATES, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS, IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, GROSS NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN ANY MANNER IN CONNECTION WITH OR RELATED TO THE SERVICES, THE REPORTS, AND THE PERFORMANCE, OR CONTEMPLATED PERFORMANCE, OF THE AGREEMENT SHALL BE LIMITED TO THE GREATER OF:

- (a) A SUM EQUIVALENT TO FIVE (5) TIMES THE AMOUNT OF FEES PAID OR PAYABLE BY THE CLIENT TO THE COMPANY IN RESPECT OF THE SERVICES THAT GIVE RISE TO THE COMPANY'S LIABILITY TO THE CLIENT; OR
- (b) TEN THOUSAND (10,000) US DOLLARS.

9.6 The Client shall indemnify the Company and its affiliates, and their respective employees, directors, agents, consultants or subcontractors against, and hold them harmless against, all claims made by third parties for loss, damage or expense of whatever nature (including, but not limited to negligence and gross negligence) and howsoever arising, relating to the performance, purported performance or non-performance of any Service, to the extent that the aggregate of such claims for any one Service exceeds the limitation of liability as set out in Article 9.5.2 above.

9.7 Without prejudice to Article 9.5, the Company shall not be liable to the Client for and the Client shall be precluded from bringing any claim for the losses as set out in 9.5.1 in respect of (a) the Services and the Reports; (b) any breach of the Agreement; (c) any use made by the Client of the Services, the Reports or any part of them; and (d) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Agreement, unless notice of such claim is received by the Company before twelve (12) months after the earlier of (i) the date of performance by the Company of the Services which give rise to the claim, or (ii) the date when the Services should have been completed in the event of any alleged non-performance.

## 10. TERMINATION

10.1 The Agreement may be terminated by the Company at any time without liability to the Client by giving a minimum of thirty (30) days' prior written notice to the Client.

10.2 Without prejudice to any other rights or remedies which the Parties may have, either Party may terminate the Agreement without liability to the other on giving the other not less than seven (7) days written notice to the other if:

10.2.1 the other Party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than fifteen (15) days after being notified in writing to make such payment;

10.2.2 the other Party commits a material breach of any of the terms of the Agreement and (if such a breach is remediable) fails to remedy that breach within fifteen (15) days of that Party being notified in writing of the breach;

10.2.3 the other Party repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;

10.2.4 the other Party becomes unable to pay its debts as and when they become due;

10.2.5 the other party becomes insolvent or enters receivership (for financial or other reasons), or insolvency or bankruptcy proceedings are commenced by or against such Party;

10.2.6 the other party assigns or transfers any right or interest in this Agreement other than as authorized under this Agreement; or

10.2.7 the other Party suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business.

10.3 On termination of the Agreement for any reason:

10.3.1 the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;

10.3.2 the Client shall return all of the Company's Equipment. If the Client fails to do so, then the Company may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and

10.3.3 the accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

10.4 On termination of the Agreement (however arising), Articles 7, 8, 9, 19 and 20 shall survive and continue in full force and effect.

## 11. FORCE MAJEURE

11.1 For the purposes of this Article 11, "**Force Majeure**" shall mean an event, the occurrence of which is beyond the

reasonable control of the claiming Party, including without limitation the following events and circumstances:

- 11.1.1 acts of war (whether declared or undeclared), armed conflict, civil unrest or insurrection, blockade, embargo, riot, sabotage, malicious damage, acts of terrorism or the specific threats of such acts or events, or conditions attributable to such acts or events;
- 11.1.2 strike, work slow down, lockout or other industrial disturbance or labour dispute (whether involving the workforce of the Party so prevented or of any other Party), or default of suppliers or of sub-contractors;
- 11.1.3 epidemics or plague;
- 11.1.4 fire, earthquake, cyclone, hurricane, flood, drought, lightning, storms, storm warnings, navigational and maritime perils, or other acts of God;
- 11.1.5 breakage, fire, freezing, explosion, mechanical breakdown or other damage or malfunction resulting in the partial or complete shutdown of the facilities of the claiming Party;
- 11.1.6 a change in law, hindrance of government or other act or failure to act by any government claiming jurisdiction over the Agreement or the Parties;

and which renders either the Client or the Company unable, wholly or in part to carry out its obligations under the Agreement (other than the obligation to make payments of sums due to the other Party), which inability could not have been prevented or overcome by the claiming Party exercising reasonable foresight, planning and implementation.

- 11.2 If as a result of Force Majeure any Party is rendered unable, wholly or in part, to carry out its obligations under the Agreement, other than the obligation to pay any amounts due, then the obligations of the Party giving notice of such event, so far as and to the extent that the obligations are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused and for such reasonable period thereafter as may be necessary for the Party to put itself in the same position that it occupied prior to the Force Majeure, but for no longer period.
- 11.3 In the event of the Company being prevented for any reason beyond its control, including events of Force Majeure, from performing or completing the Services, the Client agrees:
  - 11.3.1 to reimburse the Company for any expenditures actually made or incurred; and
  - 11.3.2 to pay the proportion of fees due for the Services which have been actually carried out and to release the Company from all responsibility for partial or total non-performance of the Services.
- 11.4 The Party claiming Force Majeure shall notify the other Party of the Force Majeure within forty eight (48) hours after the occurrence of the facts relied on and shall keep the other Party informed of all significant developments. Such notice shall give reasonably full particulars of the Force Majeure and also estimate the period of time which

the Party will probably require to remedy the Force Majeure.

- 11.5 The affected Party shall use all reasonable diligence to remove or overcome the Force Majeure situation as quickly as possible in an economically reasonable manner, but shall not be obligated to settle any labour dispute except on terms acceptable to it, and all such disputes shall be handled within the sole discretion of the affected Party.

## 12. VARIATION AND CHANGE CONTROL

- 12.1 The Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 12.2 If the Company requests a change to the scope of the Services for any other reason, the Client shall not unreasonably withhold or delay consent to it.
- 12.3 Subject to Article 12.1, no variation of the Agreement or of these General Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the Parties.
- 12.4 If at any time the Client wishes to make any changes to the Services or request any services other than and in addition to the Services, the Client shall submit such request in writing to the Company, and the provision of such additional services shall be subject to agreement by both Parties in writing and in accordance with these General Conditions and, in particular, the requirements of Article 12.5 below.
- 12.5 In the event of a request for a change to the Services or additional Services as set out in Article 12.4 above, the Company shall notify the Client of any additional costs and expenses due and payable as a result, and the Company shall only proceed to carry out such amended or additional Services if the Client agrees in writing to such costs so notified. Unless otherwise agreed in writing, the provision of all such amended or additional services shall be subject to the terms of the Agreement, including these General Conditions.

## 13. WAIVER

- 13.1 A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a Party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

## 14. SEVERANCE

- 14.1 If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected. If a provision of the Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## 15. ENTIRE AGREEMENT

- 15.1 The Agreement constitutes the whole agreement between the Parties and supersedes all previous agreements and communications between the Parties relating to the performance of the Services by the Company. These General Conditions shall take precedence over any terms or conditions set out in the Client's purchase order or other communications with the Company, unless expressly otherwise agreed in writing by the Company.
- 15.2 Each Party acknowledges that, in entering into the Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than for breach of contract as expressly provided in the Agreement.
- 15.3 Nothing in this Article 15 shall limit or exclude any liability for fraud.

## 16. ASSIGNMENT

- 16.1 The Client shall not, without the prior written consent of the Company, assign, transfer, charge, mortgage, subcontract or deal in any manner with all or any of its rights or obligations under the Agreement.
- 16.2 The Client acknowledges and hereby expressly consents that the Company may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.
- 16.3 Each Party that has rights under the Agreement is acting on its own behalf and not for the benefit of another person.

## 17. NO PARTNERSHIP OR AGENCY

- 17.1 Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership, joint venture, trust or association of any kind between the Parties, nor constitute any Party the agent of the other Party for any purpose. No Party shall have authority to act as agent for, or to bind, the other Party in any way.

## 18. NOTICES

- 18.1 Notices or other communications and exchanges of documents necessary for performance of the Agreement shall be validly sent by personal delivery, first class post, facsimile, by electronic mail or by any other written form as agreed in writing by the Parties.
- 18.2 These documents shall be effective:
- 18.2.1 if by way of fax, at the time of transmission subject to confirmation of receipt;
- 18.2.2 if by hand delivery, on the date of delivery;
- 18.2.3 if by way of first class post, three (3) days after the date of posting;
- 18.2.4 if by way of email, after being received in readable form and after automatic electronic acknowledgment of receipt.
- 18.3 This Article 18 shall not apply to the service of any process in any proceedings or other documents in any legal action.

## 19. WAIVER OF SOVEREIGN IMMUNITY

- 19.1 Each Party recognizes and acknowledges that the Agreement constitutes a commercial transaction, and that its rights and obligations under the Agreement are of a commercial and not a governmental nature. To the fullest extent not prohibited by applicable laws and regulations, each of the Parties hereby irrevocably waives on behalf of itself and its assets, any and all immunities from jurisdiction, from enforcement and for any other purpose whatsoever.

## 20. GOVERNING LAW AND JURISDICTION

- 20.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of Florida, notwithstanding any conflicts of laws rules that could require the application of any other law.
- 20.2 The Parties irrevocably agree that the courts of Florida shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter.
- 20.3 If Client makes a claim against Company, for any alleged error, omission, or other act arising out of the performance of its professional services and to the extent the Client fails to prove such claim, then the Client shall pay all costs including attorney's fees incurred by Company in defending the claim.