

TS Immigration Consultancy

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Terms and conditions for the supply of services

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 7 (LIMITATION OF LIABILITY).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1. Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in Hong Kong, when banks in Hong Kong are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with the Contract.

Conditions: these terms and conditions as amended from time to time in accordance with clause 10.5.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from the Supplier.

Customer Default: has the meaning set out in clause 4.2.

Deliverables: the deliverables set out in the Contract produced by the Supplier for the Customer.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by the Supplier to the Customer.

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Supplier: TS Immigration Consultancy Limited registered in Hong Kong with company number 3013350.

Supplier Materials: has the meaning set out in clause 4.1(e).

1.2. Interpretation:

- (a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1. Any descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.2. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.3. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

- 3.1. The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2. The Supplier shall use reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

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3.3.The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4.The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

4.1.The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- (e) keep all materials, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

4.2.If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

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- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. Charges and payment

5.1. The Customer shall pay each bill submitted by the Supplier:

- (a) within 28 days of the date of the bill or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

5.2. If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 8, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.2 will accrue each day at 8% a year.

5.3. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual property rights

6.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

6.2. The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

6.3. The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.

6.4. The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

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7. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

7.1. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

7.2. References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

7.3. Nothing in this clause 7 shall limit the Customer's payment obligations under the Contract.

7.4. Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 14 of the Sale of Goods Ordinance (Cap 26) (title and quiet possession).

7.5. Subject to clause 7.4 (Liabilities which cannot legally be limited), the Supplier's total liability to the Customer for all loss or damage shall not exceed HK\$10,000.

7.6. The caps on the Supplier's liabilities shall be reduced by:

- (a) payment of an uncapped liability;
- (b) amounts awarded or agreed to be paid under the Contract;
- (c) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.

7.7. Subject to clause 7.3 (No limitation of customer's payment obligations) and clause 7.4 (Liabilities which cannot legally be limited), this clause 7.7 sets out the types of loss that are wholly excluded:

- (a) loss of profits.
- (b) loss of sales or business.
- (c) loss of agreements or contracts.

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- (d) loss of anticipated savings.
- (e) loss of use or corruption of software, data or information.
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

7.8. The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 15, 16 and 17 of the Sale of Goods Ordinance (Cap 26) are, to the fullest extent permitted by law, excluded from the Contract.

7.9. Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 1 month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

7.10. This clause 7 shall survive termination of the Contract.

8. Termination

8.1. Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 1 week's written notice.

8.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 3 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

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- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
or
- (b) there is a change of control of the Customer.

8.4. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) the Customer becomes subject to any of the events listed in clause 8.2(c) or clause 8.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
- (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 8.2(b).

9. Consequences of termination

9.1. On termination or expiry of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid bills and interest and, in respect of Services supplied but for which no bill has been submitted, the Supplier shall submit a bill, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

9.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

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9.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

10. General

10.1. **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

10.2. **Assignment and other dealings.**

(a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

10.3. **Confidentiality.**

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.3(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

10.4. **Entire agreement.**

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

10.5. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.6. **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

10.7. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 10.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

10.8. **Notices.**

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Contract.

(b) Any notice or communication shall be deemed to have been received:

(i) if delivered by hand, at the time the notice is left at the proper address;

(ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

(iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 10.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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- (c) This clause 10.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

10.9. **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce any term of the Contract.

- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

10.10. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of Hong Kong.

10.11. **Jurisdiction.** Each party irrevocably agrees that the courts of Hong Kong shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.