Intertek CAPCIS

Conditions of Contract in Relation to Projects Undertaken by ITS Testing Services (UK) Limited trading as Intertek CAPCIS ("CAPCIS").

1. All work carried out and/or performed and/or goods supplied by CAPCIS for a Client ("a Project") shall be carried out and performed subject to these conditions of Contract ("the Conditions").

2. The Conditions shall in relation to a Project supersede any earlier conditions relating to work previously performed by CAPCIS for the Client and shall apply to the exclusion of any terms of conditions stipulated by the Client and (in so far as permissible) shall over-ride any terms or conflicting conditions which would otherwise be applied under common law or by operation of statute. CAPCIS shall only be bound by an agreement if it is in writing and signed by a duly authorised representative of CAPCIS.

3. Any offer to carry out a Project will automatically be withdrawn without notice to the Client three calendar months after it is made. Any acceptance of any offer must be made in writing.

4. (a) Save where CAPCIS has specifically agreed in writing to accept a fixed fee CAPCIS will be entitled to charge for its services on the basis of the current charge rates (available on request) together with any expenses incurred.

   (b) CAPCIS does not warrant that it will be possible to comply with any estimate given of the likely duration or cost of a Project or any delivery date agreed.

   (c) Where an estimate of the likely duration or cost of a Project is given or any delivery date is agreed or when a Client stipulates a maximum limit for duration or costs CAPCIS shall notify the Client if it becomes impossible to deliver or to complete a Project within such estimate delivery date or limit. Upon such notification, the Client shall be entitled within seven days to instruct CAPCIS to continue the Project beyond such estimate limit or delivery date. If at the end of seven days the Client has not instructed CAPCIS to continue the Project CAPCIS shall forthwith discontinue the Project and notify the Client of its charges in respect of work done, services performed and expenses incurred up to date of such discontinuance and the Client shall pay the same within twenty eight days of the issue of such notification.

   (d) Without prejudice to the foregoing provisions of this clause CAPCIS shall have no liability for any delays arising by circumstances beyond its reasonable control.

   (e) Where a fixed fee has been agreed, and circumstances arise which were, or additional work is required which was, unforeseen at the date on which the fixed fee was agreed, then CAPCIS shall notify the Client who shall seek to agree an appropriate adjustment to the fixed fee and if such adjustment cannot be agreed, then the Project shall be discontinued without any claim by either the Client or CAPCIS against the other save in respect of work done, services performed and expenses incurred to that date.

   (f) Where applicable VAT shall be payable in addition to the fee and expenses.

5. (a) CAPCIS shall, unless otherwise agreed, be entitled to invoice the Client:-

      (i) any agreed down payment forthwith upon a contract for a Project being concluded;
      (ii) the fees and expenses for work carried out prior to the date of such invoice, on the last day of each calendar month; and
      (iii) the balance of fees and expenses upon submission of its Final Report

   (b) Where it is agreed that a payment of fees is to be made prior to commencement of any work, CAPCIS shall be entitled to defer commencement of work until payment is made in full, making a consequent adjustment to the date for completion of the Project and recovering any additional costs and expenses arising by reason of such deferment.

   (c) Unless otherwise agreed all invoices shall be submitted and paid in pounds sterling.

   (d) All invoices shall be paid within twenty eight days of issue.

   (e) If the Client fails to pay any sums due to CAPCIS within 28 days of the issue of the invoice therefor, CAPCIS shall be entitled to charge interest on the balance outstanding at the rate of 2% above Lloyds TSB plc's base rate for the time being for the period in excess of 28 days.

6. (a) No member, employee or agent of CAPCIS shall be required to undertake any work which involves risk of personal injury or illness and the Client shall take all reasonable care to see that, where a Project calls for work to be carried out outside CAPCIS, the conditions of work are safe.

   (b) The Client shall not during a Project or for twelve months from the completion thereof solicit or entice away or employ any employee of CAPCIS.

7. (a) Nothing in this Condition shall purport to exclude or restrict CAPCIS's liability for death or personal injury resulting from negligence.

   (b) CAPCIS warrants that it will carry out its duties in respect of a Project with reasonable care and skill and this warranty shall be the only warranty given in respect of such duties. All other conditions and warranties expressed or implied by statute or common law or otherwise are hereby excluded.

   (c) If CAPCIS shall not comply with the warranty given in Condition 7.(b) CAPCIS will at is option and expense:-

      (i) take such steps as CAPCIS considers necessary to comply with such warranty; or
      (ii) refund the whole or an appropriate part of the fees charged for its services or goods supplied hereunder.

      Performance for any one of the above options shall constitute discharge of CAPCIS's entire liability under the said warranty.

   (d) CAPCIS shall not under any circumstances be liable for loss of profit, use or goodwill or (subject to Condition 7.(e)) for any indirect or consequential loss of any kind whether caused by negligence or otherwise howsoever and whether or not such a loss has been suffered by the Client or by some third party to whom the Client may be liable.

   (e) Notwithstanding Condition 7.(c) above if CAPCIS has failed to comply with the warranty given in Condition 7.(b) hereof and as a result the Client suffers loss or damage in respect of which CAPCIS has effected insurance indemnity CAPCIS's liability in respect of such loss or damage shall not exceed the greater of (i) the amount of the payment made by the Client in respect of CAPCIS's charges for the Project and (ii) the amount (if any) paid to it under such policy PROVIDED THAT if the Client fails to notify CAPCIS immediately of any loss, damage or circumstances which may give rise to a claim under such policy and CAPCIS is thereby prevented from claiming under such policy CAPCIS's liability shall be no more than set out in Condition 7.(c). The limit of such insurances shall be notified upon request.

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(f) The Client will in no circumstances make any claim against any member, employee or agent of CAPCIS in respect of anything done or omitted to be done in respect of or in relation to a Project.

(g) Should CAPCIS incur any liability whatsoever or howsoever arising to a third party in consequence of the implementation or advice or opinions of CAPCIS or the data and information produced by a Project or in respect of any goods supplied by CAPCIS for which CAPCIS is not liable or in excess of CAPCIS's liability under these Conditions the Client will indemnify CAPCIS in full against such liability or such excess liability (as the case may be).

(h) Should any member, employee or agent of CAPCIS incur any liability whatsoever or howsoever arising to any person whatsoever in consequence of the implementation of advice or opinions of CAPCIS or the data and information produced by a Project or in respect of any goods supplied by CAPCIS the Client will indemnify the member, employee or agent against such liability. Should the Client fail to indemnify the member, employee or agent as aforesaid, CAPCIS (without prejudice to any other rights or remedies it may have) shall be entitled itself to indemnify the member, employee or agent against the said liability and to recover the costs of so doing from the Client to the extent that such cost is not a liability of CAPCIS under these conditions.

(i) The Client warrants to CAPCIS that all data and information supplied by it to CAPCIS for the purpose of a Project shall be full and accurate when given and that it will notify CAPCIS promptly of any changes therein.

(j) It shall not be a breach of the warranty contained in Clause 7.(b) where CAPCIS in good faith relies on data tests and information supplied or published by third parties or its sub-contractors.

(k) The foregoing provisions of this Contract shall apply notwithstanding that the act or omission giving rise to the liability in question constitute a fundamental breach of contract on the part of CAPCIS.

Confidential Information

8. (a) If any confidential information comes to the attention of either the Client or CAPCIS in connection with a Project the same shall not be disclosed to any third party without the prior consent in writing of the party from whom such confidential information was obtained and the party to whom such information belonged save that where CAPCIS employs outside consultants or obtains independent advice or assistance in relation to any Project it shall be entitled to make such disclosure of confidential information as it deems desirable to the consultant or person providing aid or assistance and shall take reasonable steps to ensure that the same is kept confidential by such person.

(b) Neither the Client nor CAPCIS shall use the name of the other in any publicity material.

Reports and Intellectual Property

9. Where applicable Progress Reports on a Project will be supplied to the Client at quarterly intervals unless otherwise agreed and a Final Report will be submitted when a Project is completed. All reports drawings advice and other information prepared by CAPCIS and/or provided to the Client and the copyright therein and all intellectual property in respect of a Project shall become and remain the property of CAPCIS but the Client shall be entitled to have use of the information contained in the Reports for those purposes referred to in Condition 11 subject to the terms of the other conditions herein contained.

Equipment

10. All rigs and equipment which are purchased or otherwise provided in connection with or to carry out a Project (whether by the Client or CAPCIS) will be and remain the property of CAPCIS unless otherwise agreed in writing.

Patent Protection

11. If CAPCIS decides to make application for protection by patent utility model registered design or registration of copyright of any invention or novel idea or feature devised during any stage of a Project the Client if and whenever required to do so by CAPCIS shall at the expense of CAPCIS execute and do instruments and things necessary for obtaining such protection and vesting the same when obtained in CAPCIS absolutely. Save where the Project is for the supply of goods (with or without Services) the Client shall be entitled to use any information so protected for those purposes only notified by the Client to CAPCIS prior to the commencement of a Project as being those for which the Project was required.

Infringements

12. The Client warrants that any Project that it requests CAPCIS to undertake (and in particular but not limited thereto any work undertaken by CAPCIS in connection with the use of information designs or drawings supplied by the Client) shall not involve infringements of any letters patent trade marks copyrights or registered design or other rights of third parties.

Termination

13. (a) Should any of the following events occur namely:-

(i) the commission of any act of bankruptcy or the liquidation or winding up (other than for the purposes of amalgamation or reconstruction), or the appointment of a receiver on account of the insolvency of the Client;

(ii) failure of the Client to make payment to CAPCIS of any sums payable pursuant to Clause 5 within one calendar month of the due date;

then CAPCIS may forthwith terminate any agreement with the Client by notice in writing. Termination shall take effect without prejudice to any rights or remedies of CAPCIS or the Client accrued at the date of termination.

(b) Without prejudice to its rights under Condition 13.(a) CAPCIS may suspend a Project if any of the events referred to in Condition 13.(a)(i) and (ii) shall occur.

Title

14. The legal and beneficial ownership of CAPCIS in any goods to be supplied by CAPCIS shall not pass until payment in full has been made in respect of those goods or the Project in respect of which the supply of those goods forms a part.

Arbitration

15. Any dispute arising between CAPCIS and the Client shall be determined by an arbitrator to be appointed by the President of the London Court of International Arbitration. Such arbitration shall be conducted in accordance with the Rules of the London Court of International Arbitration.

Proper Law

16. This Contract is governed by the Law of England.

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