

# LWG ASSURANCE SERVICES

## TERMS AND CONDITIONS FOR THE SUPPLY OF AUDIT SERVICES



THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).

### 1. INTERPRETATION

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

#### 1.1 Definitions:

**AS:** LWG Assurance Services registered in England and Wales with company number 16206945 whose registered office is at 85 Great Portland Street, First Floor, London, England, W1W 7LT.

**AS Materials:** has the meaning set out in clause 4.1(h).

**Audit Application:** the Client's request for the Audit Services as set out in the Client's online audit application form submitted through the AS website.

**Audit Services:** the services, including the Deliverables, supplied by AS to the Client as set out in the Audit Quote.

**Audit Quote:** the description or specification of the Audit Services provided in writing by AS to the Client.

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

**Charges:** the charges payable by the Client for the supply of the Audit Services in accordance with clause 5.

**Client:** the person or firm who purchases Audit Services from AS.

**Client Default:** has the meaning set out in clause 4.2.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.5.

**Contract:** the contract between AS and the Client for the supply of Audit Services in accordance with these Conditions.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**Deliverables:** any outputs of the Audit Services and any other documents or materials provided by AS to the Client as specified in the Audit Quote or in relation to the Audit Services, including audit reports.

**Intellectual Property Rights:** patents, utility models, 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.

**LWG:** Leather Working Group incorporated and registered in England and Wales with company number 08098331 whose registered office is at The Pinnacle, 170 Midsummer Boulevard, Milton Keynes, Buckinghamshire, MK9 1FE.

**LWG Standards:** the standards maintained by LWG, as amended from time to time.

**Order:** the Client's order for the Audit Services as set out in the Client's purchase order form.

#### 1.2 Interpretation:

- (a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.

- (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 but not fax.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Client to purchase Audit Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when AS issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4 Any quotation given by AS shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

## 3. SUPPLY OF AUDIT SERVICES

- 3.1 AS shall supply the Audit Services to the Client in accordance with the Audit Quote in all material respects.
- 3.2 AS shall use all reasonable endeavours to meet any performance dates specified in the Audit Quote, but any such dates shall be estimates only and time shall not be of the essence for performance of the Audit Services.
- 3.3 AS reserves the right to amend the Audit Quote 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 Audit Services, and AS shall notify the Client in any such event.
- 3.4 AS warrants to the Client that the Audit Services will be provided using reasonable care and skill.
- 3.5 AS will only issue a certificate to a Client that complies with these Conditions and the terms of the agreed audit plan, and meets the relevant LWG Standard(s) certification requirements.
- 3.6 The Client can request an alternative auditor to perform the Audit Services but AS has absolute discretion whether or not to agree to such request.

## 4. CLIENT'S OBLIGATIONS

- 4.1 The Client shall:
  - (a) ensure that the terms of the Order and any information it provides in the Audit Application are complete and accurate;
  - (b) co-operate with AS in all matters relating to the Audit Services;
  - (c) provide AS, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation, staff and other facilities as reasonably required by AS, including ensuring full compliance with all relevant health and safety standards;
  - (d) provide AS with such data, information and materials as AS may reasonably require in order to supply the Audit Services (including regular reporting of data and information as stipulated by the requirements of the LWG Standards), and ensure that such information is complete and accurate in all material respects;
  - (e) prepare the Client's premises for the supply of the Audit Services;

- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Audit Services before the date on which the Audit Services are to start;
- (g) accept the presence of a witness auditor (to be notified to the Client in advance) who may accompany the contracted auditor from time to time for the purposes of quality control;
- (h) keep all materials, equipment, documents and other property of AS, its employees, agents, consultants and subcontractors (**AS Materials**) at the Client's premises in safe custody at its own risk, maintain AS Materials in good condition until returned to AS, and not dispose of or use AS Materials other than in accordance with AS's written instructions or authorisation; and
- (i) comply with any additional obligations as set out in the Audit Quote.

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

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

## 5. CHARGES AND PAYMENT

5.1 The Charges for the Audit Services shall be as set out in the Order and Audit Quote.

5.2 In addition, AS shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom AS engages in connection with the Audit Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by AS for the performance of the Audit Services, and for the cost of any materials.

5.3 AS shall invoice the Client in advance.

5.4 The Client shall pay each invoice submitted by AS:

- (a) within 7 days of the date of the invoice or prior to commencement of the Audit, whichever is earliest; and
- (b) in full and in cleared funds to a bank account nominated in writing by AS, and

time for payment shall be of the essence of the Contract.

5.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by AS to the Client, the Client shall, on receipt of a valid VAT invoice from AS, pay to AS such additional amounts in respect of VAT as are chargeable on the supply of the Audit Services at the same time as payment is due for the supply of the Audit Services.

5.6 If the Client fails to make a payment due to AS under the Contract by the due date, then, without limiting AS's remedies under clause 9 and/or clause 4.2(c), the Client shall lose its previously agreed audit slot as per the Audit Quote.

5.7 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 Audit Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by AS.
- 6.2 AS grants to the Client, or shall procure the direct grant to the Client 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 Client) for the purpose of receiving and using the Audit Services and the Deliverables in its business.
- 6.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Client grants AS a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to AS for the term of the Contract for the purpose of providing the Audit Services to the Client.

### 7. DATA PROTECTION

Each party shall comply with all applicable requirements of all applicable data protection and privacy legislation in force from time to time in the UK and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications). This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under any applicable data protection legislation.

### 8. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in this clause 8 shall limit the Client's payment obligations under the Contract.
- 8.3 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 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.4 Subject to clause 8.3 (Liabilities which cannot legally be limited), AS's total liability to the Client shall not exceed the total sums actually received by AS from the Client under this Contract.
- 8.5 Subject to clause 8.2 (No limitation of the Client's payment obligations) and clause 8.3 (Liabilities which cannot legally be limited), this clause 8.5 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.
  - (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.

8.6 AS has given commitments as to compliance of the Audit Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

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

8.8 This clause 8 shall survive termination of the Contract.

### **9. TERMINATION**

9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party three months' written notice.

9.2 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 14 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 under Part A1 of the Insolvency Act 1986, 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
- (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.

9.3 Without affecting any other right or remedy available to it, AS may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.

9.4 Without affecting any other right or remedy available to it, AS may suspend the supply of Audit Services under the Contract or any other contract between the Client and AS if:

- (a) the Client fails to pay any amount due under the Contract on the due date for payment;
- (b) the Client becomes subject to any of the events listed in clause 9.2(c) or clause 9.2(d), or AS reasonably believes that the Client is about to become subject to any of them; and
- (c) AS reasonably believes that the Client is about to become subject to any of the events listed in clause 9.2(b).

### **10. CONSEQUENCES OF TERMINATION**

10.1 On termination or expiry of the Contract:

- (a) the Client shall immediately pay to AS all of AS's outstanding unpaid invoices and interest and, in respect of Audit Services supplied but for which no invoice has been submitted, AS shall submit an invoice, which shall be payable by the Client immediately on receipt;

- (b) the Client shall return all of the AS Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then AS may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

10.2 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.

10.3 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.

### 11. GENERAL

11.1 **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.

### 11.2 Assignment and other dealings.

- (a) AS 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 Client 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 AS.

### 11.3 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 11.3(b) and clause 11.3(c).
- (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 11.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) AS may disclose the Client's confidential information to the LWG solely for the purposes of aggregation, monitoring and reporting on the impact of the LWG Standards.
- (d) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 11.4 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.
- (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 or negligent misstatement based on any statement in the Contract.

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

- 11.5 **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).
- 11.6 **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.
- 11.7 **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 Contract. If any provision or part-provision of this Contract deleted under this clause 11.7 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.
- 11.8 **Notices.** A notice given to a party under or in connection with this Contract shall be in writing and sent to the party at the address or email address given in the Order or notified by that party in writing to the other party.
- (a) This clause 11.8(a) sets out the delivery methods for sending a notice to a party under this Contract and, for each delivery method, the date and time when the notice is deemed to have been received:
- (i) if delivered by hand, at the time the notice is left at the address;
  - (ii) if sent by pre-paid first class post or other next working day delivery service providing proof of postage, at 9.00am on the second Business Day after posting;
  - (iii) if sent by pre-paid airmail providing proof of postage, at 9.00am on the fifth Business Day after posting; or
  - (iv) if sent by email, at the time of transmission.
- (b) This clause does not apply to the service of any proceedings or other documents in any legal action.
- 11.9 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 11.10 **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 England and Wales.
- 11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales 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.