

## Watney Consulting Limited Terms and Conditions

### 1. Interpretation

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

#### 1.1 Definitions:

- 1 **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 2 **Charges:** the charges payable by the Client for the supply of Goods, supply of Service and/or manufacture of the Product(s) in accordance with clause 9.
- 3 **Client:** the person or firm who purchases the Goods and/or Services from Watney Consulting.
- 4 **Commencement Date:** has the meaning given in clause 2.2.
- 5 **Conditions:** these terms and conditions as amended from time to time in accordance with clause 23.10.
- 6 **Contract:** the contract between Watney Consulting and the Client for the supply of Goods, supply of Service and/or manufacture of the Product(s) in accordance with the Order and these Conditions.
- 7 **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 8 **Delivery Location:** has the meaning given in clause 4.2.
- 9 **Equipment:** the equipment, as required by Watney Consulting, that is necessary for the design, manufacture and assembly of the Product(s) (including any software licences) outlined in the Product Specification to be provided by the Client.
- 10 **Force Majeure Event:** has the meaning given to it in clause 21.
- 11 **Goods:** the goods (or any part of them) as set out in the Order, supplied by Watney Consulting manufactured by a third party supplier and not modified in anyway by Watney Consulting.
- 12 **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.
- 13 **Order:** the Client's order for the supply of Goods, supply of Service and/or manufacture of the Product(s), as set out in the Client's written acceptance of Watney Consulting's quotation, or overleaf, as the case may be.

- 14 **Product(s):** the product(s) set out in the Order to be manufactured and supplied by Watney Consulting to the Client.
- 15 **Product Specification:** the description or specification of the Product(s) provided in writing by the Client to Watney Consulting.
- 16 **Prototype:** a sample, model, or release of a product built to test a concept or process.
- 17 **Services:** the services, supplied by Watney Consulting to the Client as set out in the Services Specification.
- 18 **Services Specification:** the description or specification for the Services provided in writing by Watney Consulting to the Client.
- 19 **Timeplan:** a plan provided by Watney Consulting with the quotation outlining the actions required and the estimated time line for manufacture of the Product(s) or supply of the Services.
- 20 **Watney Consulting's Materials:** has the meaning given in clause 8.1(h).
- 21 **Watney Consulting:** Watney Consulting Ltd a private limited company registered in England and Wales with company number 12432068 whose registered office is at 4 Burnet Close, Melksham, England SN12 7SJ.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) 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.
- (e) A reference to **writing** or **written** includes email.

## 2. Basis of contract

- 2.1 The Order constitutes an offer by Watney Consulting to supply the Goods, supply the Services and/or the Product(s) in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Watney Consulting issues a written acceptance of the Order (or upon electronic confirmation), at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Watney Consulting and any illustrations or descriptions of the Services and/or the Goods contained in Watney Consulting's marketing materials are issued or published for the sole purpose of

giving an approximate idea of the Services and/or the Goods described in them. They shall not form part of the Contract nor have any contractual force.

- 2.4 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.
- 2.5 Any quotation given by Watney Consulting shall not constitute an offer, and is only valid for a period of 20 days from its date of issue.
- 2.6 Where a Timeplan is provided within a quotation it is subject to an Order being placed within 20 days from the date of issue of the quotation. If the Order is received after 20 days or the Timeplan is outlined to commence prior to an Order being placed Watney Consulting will amend the Timeplan at its sole discretion.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services and the Product(s) except where application to one or the other is specified.

### **3. Goods**

- 3.1 Watney Consulting shall ensure that the Goods shall:
  - (a) correspond with their description;
  - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by Watney Consulting;
  - (c) where they are manufactured goods, be free from defects in design, materials and workmanship and remain so for the period set out in the goods manufacturer's warranty;
  - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 Subject to clause 3.3, Watney Consulting shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
  - (a) the Client gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 3.1;
  - (b) Watney Consulting is given a reasonable opportunity of examining such Goods; and
  - (c) the Client (if asked to do so by Watney Consulting) returns such Goods to Watney Consulting's place of business at Watney Consulting's cost.
- 3.3 Watney Consulting shall not be liable for the Goods' failure to comply with the warranty in clause 3.1 if:
  - (a) the Client makes any further use of such Goods after giving a notice in accordance with clause 3.2;

- (b) the defect arises because the Client failed to follow Watney Consulting's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - (c) the Client alters or repairs such Goods without the written consent of Watney Consulting; or
  - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.
- 3.4 Except as provided in this clause 3, Watney Consulting shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 3.1.
- 3.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Watney Consulting.
- 3.6 Watney Consulting shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.
- 3.7 Watney Consulting shall comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the supply of the Goods.

#### **4. Delivery of Goods**

- 4.1 Watney Consulting shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
  - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (c) it states clearly on the delivery note any requirement for the Client to return any packaging material to Watney Consulting. Returns of packaging materials shall be at Watney Consulting's expense.
- 4.2 Watney Consulting shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Watney Consulting notifies the Client that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Watney Consulting shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Client's failure to provide Watney Consulting with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5 If Watney Consulting fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Watney Consulting shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide Watney Consulting with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.6 If the Client fails to take delivery of the Goods within three Business Days of Watney Consulting notifying the Client that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Watney Consulting's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Watney Consulting notified the Client that the Goods were ready; and
  - (b) Watney Consulting shall store the Goods until delivery takes place, and charge the Client for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which Watney Consulting notified the Client that the Goods were ready for delivery the Client has not taken delivery of them, Watney Consulting may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Client for any shortfall below the price of the Goods.
- 4.8 If Watney Consulting delivers up to and including 5% more or less than the quantity of Goods ordered the Client may not reject them, but on receipt of notice from the Client that the wrong quantity of Goods was delivered, Watney Consulting shall make a pro rata adjustment to the invoice for the Goods.
- 4.9 Watney Consulting may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.

## **5. The Product(s)**

- 5.1 The Product(s) shall be manufactured in accordance with the Product Specification supplied by the Client in all material respects.
- 5.2 The Client shall ensure that the Product Specification is complete, accurate and that the Product(s) detailed within the Product Specification are fit for purpose for the Client's requirements.
- 5.3 Where the Client does not purchase the third party Intellectual Property search services from Watney Consulting, the Client shall indemnify Watney Consulting against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Watney Consulting arising out of or in connection

with any claim made against Watney Consulting for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Watney Consulting's use of the Product Specification and manufacture of the Product(s). This clause 5.3 shall survive termination of the Contract.

- 5.4 Watney Consulting reserves the right to amend the Product Specification if required by any applicable statutory or regulatory requirement, and Watney Consulting shall notify the Client in any such event.
- 5.5 Recommendations made by Watney Consulting in respect of the Product Specification are that only. Watney Consulting make no representations or warranties that those recommendations will enhance the performance of the Product(s), ensure it is fit for purpose nor that it shall meet the Client's requirements.
- 5.6 The Product(s) are a Prototype only. Watney Consulting does not represent, warrant or undertaking that the Product(s) will be fit for purpose nor meet the Client's requirements, except to the extent that it will comply with the Product Specification.
- 5.7 Any implied or express representations, warranties or undertakings in respect of the Product(s) are, to the fullest extent permitted by law, excluded under the Contract.
- 5.8 Watney Consulting shall provide a Timeplan for the manufacture of the Product(s). Watney Consulting shall use all reasonable endeavours to meet any performance dates outlined in the Timeplan, but any such dates shall be estimates only and time shall not be of the essence for the manufacture of the Product(s).
- 5.9 The Client shall within two Business Days of the Commencement Date supply the Equipment to Watney Consulting. The Equipment remains the absolute property of the Client and Watney Consulting may not part with possession of it, or make it available, to any third party.
- 5.10 Watney Consulting shall, for the period it has possession or control of the Equipment:
  - (a) ensure that the Equipment is kept secure and identified as the property of the Client; and
  - (b) maintain, with a reputable insurance company, insurance cover for any loss or damage to the Equipment for its full replacement cost.
- 5.11 The Client shall reimburse Watney Consulting for the reasonable costs of any repair or replacement of the Equipment, except to the extent necessitated by a default on the part of Watney Consulting.

## **6. Title and risk**

- 6.1 The risk in the Goods and/or the Product(s) shall pass to the Client on completion of delivery.
- 6.2 Title to the Goods and/or the Product(s) shall not pass to the Client until Watney Consulting receives payment in full (in cash or cleared funds) for the Goods.

- 6.3 Until title to the Goods and/or the Product(s) has passed to the Client, the Client shall:
- (a) store the Goods and/or the Product(s) separately from all other goods held by the Client so that they remain readily identifiable as Watney Consulting's property;
  - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and/or the Product(s);
  - (c) maintain the Goods and/or the Product(s) in satisfactory condition and keep them insured against all risks for their full price on Watney Consulting's behalf from the date of delivery;
  - (d) notify Watney Consulting immediately if it becomes subject to any of the events listed in clause 18.2(b) to clause 18.2(d); and
  - (e) give Watney Consulting such information relating to the Goods and/or the Product(s) as Watney Consulting may require from time to time.
- 6.4 If before title to the Goods and/or the Product(s) passes to the Client the Client becomes subject to any of the events listed in clause 18.2(b) to clause 18.2(d), then, without limiting any other right or remedy Watney Consulting may have, Watney Consulting may at any time:
- (a) require the Client to deliver up all Goods and/or the Product(s) in its possession that have not been resold, or irrevocably incorporated into another product; and
  - (b) if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods and/or the Product(s) are stored in order to recover them.

## **7. Supply of Services**

- 7.1 Watney Consulting shall supply the Services to the Client in accordance with the Services Specification in all material respects.
- 7.2 Watney Consulting shall use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification or the Timeplan, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 Watney Consulting reserves the right to amend the Services 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 Watney Consulting shall notify the Client in any such event.
- 7.4 Watney Consulting warrants to the Client that the Services will be provided using reasonable care and skill.

## 8. Client's obligations

### 8.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides in the Service Specification and/or the Product Specification are complete and accurate;
- (b) co-operate with Watney Consulting in all matters relating to the Services;
- (c) provide Watney Consulting, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by Watney Consulting to provide the Services;
- (d) provide Watney Consulting with such information and materials as Watney Consulting may reasonably require in order to supply the Services and manufacture the Product(s), and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Client's premises for the supply of the Services;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services and/or the Product(s) before the date on which the Services and/or manufacture of the Product(s) are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) keep all materials, equipment, documents and other property of Watney Consulting (**Watney Consulting's Materials**) at the Client's premises in safe custody at its own risk, maintain Watney Consulting's Materials in good condition until returned to Watney Consulting, and not dispose of or use Watney Consulting's Materials other than in accordance with Watney Consulting's written instructions or authorisation;
- (i) where the Client is providing the materials for the manufacture of the Product(s) ensure the materials are fit for purpose;
- (j) where the Client does not purchase the third party Intellectual Property search services from Watney Consulting in respect of the Product(s), conduct its own search and confirm to Watney Consulting that Watney Consulting' use of the Product Specification and the manufacture of the Product(s) shall not infringe a third party's Intellectual Property Rights; and
- (k) comply with any additional obligations as set out in the Service Specification and/or the Product Specification.

### 8.2 If Watney Consulting'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, Watney Consulting shall have the right to suspend performance of the 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 Watney Consulting's performance of any of its obligations;



- (b) Watney Consulting shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Watney Consulting's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Client shall reimburse Watney Consulting on written demand for any costs or losses sustained or incurred by Watney Consulting arising directly or indirectly from the Client Default.

## **9. Charges and payment**

### **9.1 The price for Goods:**

- (a) shall be the price set out in the Order; and
- (b) shall be inclusive of all costs and charges of packaging, insurance, transport of the Goods.

### **9.2 The Charges for Services and the Product(s) (if applicable) shall be calculated on a time and materials basis:**

- (a) the Charges shall be calculated in accordance with Watney Consulting's daily fee rates, as set out in its current price list provided to the Client at the date of the Contract;
- (b) Watney Consulting's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
- (c) Watney Consulting shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Watney Consulting engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Watney Consulting for the performance of the Services; and
- (d) Watney Consulting shall be entitled to charge the Client for materials required for the manufacture of the Product(s) and any costs for materials required for the performance of the Services.

### **9.3 Watney Consulting shall be entitled to charge an overtime rate of 150% of the daily fee rate on a pro rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2(b).**

### **9.4 Watney Consulting reserves the right to:**

- (a) increase the Charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
- (b) increase the Charges for the Goods, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Goods to Watney Consulting that is due to:

- (i) any factor beyond the reasonable control of Watney Consulting (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Client to change the delivery date(s), quantities or types of Goods ordered; or
  - (iii) any delay caused by any instructions of the Client in respect of the Goods or failure of the Client to give Watney Consulting adequate or accurate information or instructions in respect of the Goods.
- (c) increase the Charges for the Products, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Product(s) to Watney Consulting that is due to any factor beyond the reasonable control of Watney Consulting (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs).

9.5 Watney Consulting shall invoice the Client:

- (a) for the Goods on delivery;
- (b) for the Services in accordance with completion of each stage of the project as outlined within the Timeplan; and
- (c) for the Product(s) in accordance with completion of each stage of the project as outlined within the Timeplan.

9.6 The Client shall pay each invoice submitted by Watney Consulting:

- (a) within 14 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by Watney Consulting, and

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

9.7 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 Watney Consulting to the Client, the Client shall, on receipt of a valid VAT invoice from Watney Consulting, pay to Watney Consulting such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.8 If the Client fails to make a payment due to Watney Consulting under the Contract by the due date, then, without limiting Watney Consulting's remedies under clause 16 (Termination), Watney Consulting reserves the right to charge and the Client 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 9.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.9 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).

## **10. Intellectual property rights relating to the Services and the Products**

10.1 Watney Consulting and/or its licensors shall retain ownership of all Intellectual Property Rights arising from:

- (a) performance of the Services;
- (b) in relation to the Product(s) arising as a direct result from the manufacture of the Product(s) in accordance with the Product Specification; and
- (c) the discovery by Watney Consulting of any and all subsequent unregistered Intellectual Property Rights (which may or may not specifically relate to the Product(s)) during the manufacture of the Product(s) in accordance with the Product Specification.

10.2 Watney Consulting hereby grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, non-exclusive, royalty-free licence during the term of the Contract for the purpose of receiving and using the Services.

10.3 Subject to clause 10.5, on receipt of payment in full in accordance with clause 9, Watney Consulting hereby grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, non-exclusive, royalty-free perpetual licence for the purpose of receiving and using the Product(s).

10.4 The Client shall not assign or otherwise transfer the rights granted in clause 10.2 and clause 10.3, without the prior written consent of Watney Consulting, except that Client may sub-license the rights granted in clause 10.3 to its customers for the purpose of using the Product(s).

10.5 Where a Product uses a subsystem or component provided by a third party and a licence from the third party is required for the Client to use the Product, all fees and costs due to third party under the terms of the required licence (including renewal fees) and compliance with the terms of the licence will be the sole responsibility of the Client.

## **11. Data protection**

Both parties will comply with all applicable requirements of the Data Protection Legislation.

## **12. Insurance**

During the term of the Contract and for a period of one year thereafter, Watney Consulting shall maintain in force insurance policies with a reputable insurance company, against all risks that would normally be insured against by a prudent businessman in connection with the risks associated with this Contract, and produce to the Client on demand full particulars of that insurance and the receipt for the then current premium.

### **13. Change Control**

- 13.1 Either party may submit a written request to change the scope, nature, volume or execution of the Goods, the Services and/or the Product(s) under the Contract but no proposed changes shall come into effect until a change order has been signed by both parties. A change order shall be a document setting out the proposed changes and the effect that those changes will have on:
- (a) the Services, the Goods and/or the Product(s);
  - (b) the existing Charges;
  - (c) the Timeplan; and
  - (d) any of the terms of the Contract.
- 13.2 If Watney Consulting wishes to make a change it shall provide a draft change order to the Client.
- 13.3 If the Client wishes to make a change:
- (a) it shall notify Watney Consulting and provide as much detail as Watney Consulting may reasonably require of the proposed changes, including the timing of the proposed changes; and
  - (b) Watney Consulting shall, as soon as reasonably practicable after receiving the information at clause 13.3(a), provide a draft change order to the Client.
- 13.4 If the parties:
- (a) agree to a change order, they shall sign it and that change order shall amend the Contract; or
  - (b) are unable to agree a change order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 21.
- 13.5 Watney Consulting may charge for the time it spends on preparing and negotiating change orders which implement changes proposed by the Client pursuant to clause 14.3 on a time and materials basis at the Supplier's daily fee rates (as amended from time to time), a copy of which has been provided to the Client

### **14. Confidentiality**

- 14.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customer, clients or suppliers of the other party, except as permitted by clause 14.2.
- 14.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its

obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and

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

14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## **15. Limitation of liability**

15.1 The restrictions on liability in this clause 15 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

15.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

15.3 Subject to clause 4.5 and clause 15.2, Watney Consulting's total liability to the Client shall not exceed the total Charges for the Goods, the Services and/or the Product(s) that Watney Consulting has received at the time the claim is made.

15.4 Subject to clause 15.3, Watney Consulting shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (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.

15.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and 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.

15.6 Unless the Client notifies Watney Consulting that it intends to make a claim in respect of an event within the notice period, Watney Consulting 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 three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

15.7 This clause 15 shall survive termination of the Contract.

## **16. Marketing**

16.1 Watney Consulting reserves the right to write a case study pursuant to this Contract detailing the Products, the Services and/or the Goods delivered by them to the Client and the benefits thereof to the Client. Such case study may contain photographs and descriptions of the Products, Services and/or Goods. Where the case study contains photographs and descriptions of the Products, such materials shall only be published to third parties after the earlier of the launch of the Product by the Client or once the Client has published a description and/or photographs of the Product within its own materials (including but not limited to: paper publications; on the Client's website; or via social media).

16.2 If the Client submits a testimonial to Watney Consulting, then the Client agrees that Watney Consulting may publish the Client's testimonial, together with the Client's name and logo, on Watney Consulting's website or promotional material.

16.3 The Client agrees that Watney Consulting may edit the testimonial and publish edited or partial versions of the testimonial. Watney Consulting will not edit a testimonial in such a way as to create a misleading impression of the Client's views.

## **17. Termination**

17.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than six months' written notice.

17.2 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 its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice 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), 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;
- (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.

- 17.3 Without affecting any other right or remedy available to it, Watney Consulting 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
- 17.4 Without affecting any other right or remedy available to it, Watney Consulting may suspend the supply of Services or all further deliveries of Goods or manufacture of the Product(s) under the Contract or any other contract between the Client and Watney Consulting if the Client fails to pay any amount due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 17.2(b) to clause 17.2(d), or Watney Consulting reasonably believes that the Client is about to become subject to any of them.

## **18. Consequences of termination**

- 18.1 On termination of the Contract:
- (a) the Client shall immediately pay to Watney Consulting all of Watney Consulting's outstanding unpaid invoices and interest and:
    - i. in respect of Services and/or the Goods supplied but for which no invoice has been submitted, Watney Consulting shall submit an invoice, which shall be payable by the Client immediately on receipt; and
    - ii. in respect of the Product(s) where work has been completed in accordance with the Timeplan, but for which no invoice has been submitted, Watney Consulting shall submit an invoice, which shall be payable by the Client immediately on receipt; and
  - (b) the Client shall return all of Watney Consulting Materials and any Goods which have not been fully paid for. If the Client fails to do so, then Watney Consulting 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.
- 18.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and 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.
- 18.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **19. Introductions to Watney Consulting Suppliers**

- 19.1 At the reasonable request of the Client, Watney Consulting may introduce the Client to its Suppliers.
- 19.2 For a period of two years after expiry or termination of the Contract, the Client will not directly or indirectly engage in any business with the Supplier to provide the same or similar Goods or Services as are now provided by Watney Consulting to the Client. The Client will only liaise with Watney Consulting for the supply of the Goods and/or Services from one of Watney Consulting's introduced Suppliers.

## 20. 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 (a **Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this Contract by giving seven days' written notice to the affected party and for the avoidance of doubt clause 18 (Consequences of termination) shall apply.

## 21. Dispute resolution procedure

21.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, a manager of the Client and a manager of Watney Consulting shall attempt in good faith to resolve the Dispute;
- (b) if the manager of the Client and the manager of Watney Consulting are for any reason unable to resolve the Dispute within 14 days, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than seven days after the date of the ADR notice.

21.2 No party may commence any court proceedings under clause 22.12 (Jurisdiction) in relation to the whole or part of the Dispute until 14 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

21.3 If the Dispute is not resolved within 14 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 14 days, or the mediation terminates before the expiration of the said period of 14 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 22.12 (Jurisdiction).

## 22. General

22.1 **Assignment and other dealings.** Neither party shall 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 non-assigning party (such consent in favour of Watney Consulting not to be unreasonably withheld or conditioned).



## 22.2 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:
  - (i) 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
  - (i) sent by email to the address specified by the Client in the Order, specified by Watney Consulting in the quotation or as notified in writing by the parties from time to time.
- (b) Any notice or communication shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt or 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 at the time recorded by the delivery service; and
  - (iii) if sent by email, the first Business Day after transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 22.2(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.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

22.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 22.3 shall not affect the validity and enforceability of the rest of the Contract.

22.4 **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.

22.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

22.6 **Status.** This is a Contract for the supply of services and shall not render an employee, worker, agent or sub-contractor of Watney Consulting an employee, worker, agent or sub-contractor of the Client.

**22.7 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 misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**22.8 Conflict.** If there is an inconsistency between any of the provisions of these Conditions and the Order, the provisions of the Order shall prevail in preference to these Conditions.

**22.9 Third party rights.**

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

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

**22.11 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.

**22.12 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.