

# Standard Consulting Terms of Business

## 1 Scope

- 1.1 These conditions shall govern any assignment for the supply of services, including the provision of facilities and advice ("the Services") by Genesis-SP Limited ("GENESIS-SP") to any person, firm or company ("the Client"). ("Together the Parties")

## 2 Performance of Services.

- 2.1 GENESIS-SP shall use all reasonable care and skill when carrying out the Services as set out in its Proposal attached to these terms.
- 2.2 GENESIS-SP does not represent itself as a supplier of those services usually provided by lawyers, patent agents and insurance brokers or other professional advisors and recommends that the Client seeks advice from their own advisors where appropriate before implementing any of GENESIS-SP' recommendations or advice.

## 3 Personnel

- 3.1 Where possible, GENESIS-SP shall use the consultants named in the Proposal.
- 3.2 Subject to prior notification to the Client, GENESIS-SP may replace the named consultants with other consultants of equivalent skills and experience.
- 3.3 GENESIS-SP may use third parties as necessary to perform part of the Services. GENESIS-SP will be responsible for such third parties.

## 4 Timescales and Locations

- 4.1 The Services will be provided at the times and locations agreed between the parties.
- 4.2 GENESIS-SP shall use all reasonable efforts to meet the timescales or estimates that have been agreed between the parties.

## 5 Representations by Client

- 5.1 GENESIS-SP shall be entitled to rely on the following:
- that the Client's staff (and others over whom the Client may have control) shall fully co-operate with GENESIS-SP;
  - that information supplied by the Client will be accurate and complete, and
  - that the Client has the authority to commission the assignment.

## 6 Fees and Payments

- 6.1 Quotations for professional fees are valid for six weeks from the date of the related quotation. After the expiry of the quotation GENESIS-SP shall be happy to re-quote for services.
- 6.2 All fees and charges due under this Agreement are exclusive of VAT, sales and similar taxes. The Client shall, at GENESIS-SP option, either pay direct or reimburse GENESIS-SP for any applicable taxes.
- 6.3 Fees shall be invoiced monthly as agreed between GENESIS-SP and the Client and shall be payable within 28 days from the date of the invoice. Expenses and other charges shall be invoiced monthly as Incurred. Expenses and other charges shall be charged to the Client at cost plus 15%.
- 6.4 Interest may be charged on all overdue invoices at a rate of 2% per month (APR 26.8%). Title shall not pass in any equipment goods or IP to be supplied to the Client until payment for them has been made in full.
- 6.5 If deduction or withholding is required by law in relation to payments due, the Client will gross up the payment such that after deduction or withholding of the appropriate amount GENESIS-SP receives the full amount of the invoice. Without prejudice to its other rights, the Client agrees to make payment free of set off or counterclaim.
- 6.6 Any hourly/daily/weekly/month/y rates set by GENESIS-SP shall be reviewed annually and any variation in any rates charged to the Client shall be effective from 1 January of the following year.

## 7 Confidentiality

- 7.1 Where the parties have entered into a Non Disclosure Agreement ("NDA") in relation to the Services the provisions set out in the NDA shall apply and the following provisions shall be omitted.
- 7.2 Both Parties undertake that for two years from commencement of the Services to keep confidential all proprietary or confidential information received from or on behalf of the other whether received before or after this Agreement, whether in oral, electronic or manuscript form. Either Party may disclose the confidential information to its employees, contractors, agents or advisors and to other companies within the Group for the purposes the Services. The Party receiving Confidential Information ('The Receiving Party') shall ensure that such persons comply with the confidentiality obligations set out in this Agreement. For the purpose of this clause "Group" shall mean those companies which, control, are controlled by or are under common

control with one of the Parties to this Agreement.

- 7.3 Confidential information does not include any information
- which is in the public domain either at the date of disclosure or subsequently published or disclosed otherwise than following default under this agreement, or
  - in the possession of the Receiving Party with full rights to disclose being either independently developed by the Receiving Party, its Group (as defined above) or its agents or subcontractors or supplied by a third Party without access to the Confidential information and without restriction on disclosure.
- 7.4 To protect the confidentiality of all GENESIS-SP clients access to GENESIS-SP laboratories or work areas shall not be given to any client or third parties except by special arrangement with GENESIS-SP.

## 8 Intellectual Property Rights

- 8.1 Intellectual Property (IP) means all forms of intellectual property rights, whether registered or not, including without limitation property in and rights under copyright patents, conceptual solutions, circuit layout rights, performance rights, designs, database rights, trade names, trademarks and service marks.
- 8.2 All rights in methodologies, ideas, processes, tools, know-how and other generic business methods created by GENESIS-SP at any time shall be owned by GENESIS-SP.
- 8.3 IP owned by either Party on the date of acceptance of the Proposal ("Background IP") will remain the exclusive property of the owning Party.
- 8.4 Subject to clause 8.5, no right or licence is granted under this Agreement or the Proposal to either Party's Background IP.
- 8.5 The Client hereby grants to GENESIS-SP a world-wide, royalty free, revocable, non-transferable, non-exclusive licence to use that part of the Client's Background IP which is wholly and necessarily required by GENESIS-SP solely for the performance of the Services. For the avoidance of doubt this licence shall expire upon completion of the Services or termination of the assignment whichever is the earlier.
- 8.6 Subject to payment of all outstanding amounts owed to GENESIS-SP by the Client, the Client will exclusively own the IP developed by GENESIS-SP arising from or related to the Services ("Foreground IP"). The Client will grant to GENESIS-SP a world-wide, royalty-free, revocable for breach only, transferable, exclusive licence to use that part of the Foreground IP that is not wholly and necessarily required to utilise the results of the completed Services.
- 8.7 In the event that, for whatever reason, the Client does not wish to maintain the

Foreground IP the Client shall notify GENESIS-SP and offer to transfer the Foreground IP to GENESIS-SP on terms to be agreed between the Parties.

- 8.8 Unless a patent search is undertaken by GENESIS-SP as part of the Service and as GENESIS-SP does not automatically carry out patent infringement searches, it can not warrant that the IP licensed by GENESIS-SP to the Client in the course of the Services does not infringe the rights of any third parties.

## 9 Liability

- 9.1 Each Party will be liable without limit for death and personal injury caused by its negligence and for breach of Part I of the Consumer Protection Act 1987.
- 9.2 Neither Party shall be liable for any indirect or consequential loss including loss of profit revenue, goodwill or other pure economic loss, howsoever arising.
- 9.3 GENESIS-SP shall not be liable for loss or damage suffered by the Client or by any third Party caused by modifications, adjustments, repairs or remedial work carried out to the results of the Services without GENESIS-SP prior written approval.
- 9.4 As GENESIS-SP has no control over the use of the results of the Services and GENESIS-SP frequently delivers prototype or experimental equipment to Clients for further development the Client agrees to indemnify GENESIS-SP against any claim brought against GENESIS-SP in respect of any injury, damage or loss occasioned by the use or operation of the results of the Services.
- 9.5 Subject to the above GENESIS-SP's total liability howsoever arising shall be limited to one hundred percent of the estimate of the fees payable for the Services as set out in the Proposal (exclusive of all applicable taxes).
- 9.6 Both parties undertake to maintain appropriate and adequate insurance for each respective obligation hereunder.

## 10 Force Majeure

- 10.1 Neither Party shall be liable for any breach of this Agreement resulting from that Party being prevented, hindered or delayed from observing or performing its obligations hereunder by an act beyond its reasonable control. The Party affected will as soon as reasonably possible give notice to the other Party of the occurrence of such event.

## 11 Termination

- 11.1 Either Party can terminate this Agreement at any time:
- 11.2 if the other Party commits a material breach (or a series of breaches resulting in a material breach) of this Agreement and that material breach is either irremediable or if cap" of remedy is not remedied within 15 days of written notice to do so;

- 11.3 if the other Party passes a resolution for winding up, receives a Statutory Declaration or a court of competent jurisdiction makes an order for the winding up or dissolution of the other, or an administration order is made or a receiver is appointed over all or part of the other's assets or undertaking, or the other complies with or applies to the court for protection from its creditors;
- 11.4 The Client shall pay all costs reasonably and necessarily incurred by GENESIS-SP as a result of the termination within 30 days of the date of termination.
- 11.5 Termination will not affect any accrued rights and liabilities arising out of this Agreement.

## 12 Non -Solicitation

Both parties undertake during the performance of the Services and for six months from completion of the Services not to directly or indirectly solicit any of the other Party's employees who is or has been engaged in the performance of the Services. This clause does not prevent either Party from advertising for staff in the public media.

## 13 Data Protection

Both parties warrant to the other that in relation to this Agreement it has complied with and shall continue to comply with the provisions of the Data Protection Acts 1984 and 1998, the Privacy and Electronics Communications (EC Directive) Regulations 2003 and any other applicable data protection laws and regulations (the Legislation) and shall not knowingly do anything or permit anything to be done which might lead to a breach of the Legislation by the other Party. Both parties agree to indemnify and keep indemnified the other Party against all losses, costs, expenses, damages, liabilities, demands, claims, actions, and proceedings which the other Party may incur, including but not limited to, any fine which may be levied pursuant to the Legislation arising out Of any breach by the Party of this clause.

## 14 Right of Third Parties

The rights of the Parties to this Agreement are personal to the Parties. Unless otherwise stated in this Agreement no right of a Party may be exercised or enforced by a third Party.

## 15 Publicity

The Parties will agree an appropriate external communication strategy regarding the Services provided by GENESIS-SP to the Client. Neither Party shall make a statement or release any public material relating to the Services or their performance hereunder without the prior written consent of the other, such consent not to be unreasonably withheld. GENESIS-SP may include the Client's name on its published list of clients. GENESIS-SP may anonymously refer to any services undertaken for any client.

## 16 Entire agreement

Other than in relation to Fraudulent Misrepresentation, for which GENESIS-SP cannot exclude any representation, the terms set out herein together with the Proposal contain the entire agreement between the Parties with respect to the Services set out in the

Proposal. In the event that there is a conflict between the Proposal and the terms of business the terms of business shall prevail. No warranties, promises, covenants or undertakings other than expressly set out in this Agreement shall apply. Each Party confirms that it has not relied on any representation of the other as inducing it to enter into this Agreement.

## 17 Implied Terms

All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

## 18 Variation

Variations or additions to this Agreement shall only be valid if agreed between the Parties in writing and stated to be a variation.

## 19 Waiver

Delay or omission by a Party in exercising its rights or remedies hereunder shall not be deemed to be a waiver of such right or remedy on that or any future occasion.

## 20 Notice

Notices served under this Agreement will be validly served if either:

- 20.1 delivered by hand and will be deemed received on the delivery;
- 20.2 delivered by first class post and will be deemed received two business days after posting;
- 20.3 facsimile, email or telex and will then be deemed received on receipt of transmission report or answer back.

## 21 Severability

if any of the provisions of this Agreement are judged to be invalid, illegal or unenforceable, the remainder of the provisions shall continue in full force and effect and the Parties shall attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the objectives of the invalid or unenforceable provision.

## 22 Law

English law shall govern this Agreement. Disputes will be subject to the non-exclusive jurisdiction of the English courts.