

# Hyve Supply Terms

## 1. Service Order

- 1.1 These Supply Terms apply to any goods or services supplied to you by us from time to time, including under any Service Order which is deemed to incorporate these Supply Terms.
- 1.2 We have no obligation to provide any goods or services requested by you until we both execute a Service Order with respect to those goods or services.
- 1.3 If we provide goods or services requested by you notwithstanding your failure to enter into a Service Order, and those goods or services are not expressly supplied under the terms of another agreement, our act of supplying those goods or services will be deemed to create a Service Order incorporating these Supply Terms and any goods or services supplied are deemed to be Supplies provided on these Supply Terms and in consideration for the Fees.
- 1.4 If a Service Order fails to specify the Fees applicable to the Supplies, the Fees will be calculated in accordance with our standard rates and charges applicable at the time of providing the Supplies.

## 2. Term

The Service Order begins on the Commencement Date and continues until the Supplies have been provided or it is terminated in accordance with its terms.

## 3. Provision of Supplies

- 3.1 Subject to the terms of this Agreement, we agree to provide you with the Supplies in accordance with the Service Order.
- 3.2 If transportation costs are not included in the Fees, you must pay for transportation in accordance with our published transportation rates at the time of delivery or, where no such rates are published, you must reimburse us for the transportation costs incurred.
- 3.3 Unless agreed otherwise, we will provide the services remotely, during Business Hours.

## 4. Your general obligations

- 4.1 You must provide us and our Personnel with:
  - (a) a safe and secure working environment, including adequate working space, if we determine that access to a Site is necessary to provide the Supplies; and
  - (b) access to and use of all information, equipment, documentation and facilities reasonably necessary to provide the Supplies.

## 5. Confidentiality

- 5.1 You acknowledge that our systems, software, manuals, diagnostic tools, support systems and methodologies and any technical information or data relating to them is our Confidential Information and constitutes our proprietary information and trade secrets.
- 5.2 We acknowledge that in the course of providing the services we may also become aware of, or come into possession with, your Confidential Information.
- 5.3 The receiving party must:
  - (a) treat Confidential Information as secret and confidential and as the property solely of the disclosing party;
  - (b) not use Confidential Information for any purpose other than the performance of this Agreement;
  - (c) ensure the Confidential Information is secured with the same level of security as it uses to protect its own Confidential Information;
  - (d) only disclose Confidential Information to those of its employees and other professional consultants who require Confidential Information to enable the receiving party to perform its obligations pursuant to this Agreement or otherwise exercise its rights under this Agreement; and

- (e) ensure that each person to whom Confidential Information has been disclosed complies, and is obliged to comply, with the obligations of the receiving party under this Agreement and, if reasonably required by the disclosing party, executes a confidentiality agreement in the form reasonably required by the disclosing party.

- 5.4 Without limiting this clause 5, you must not disclose to any other person any details of our fees or charges.
- 5.5 Clauses 5.3, and 5.4 do not apply to Confidential Information that the recipient is required to disclose by any applicable law or legally binding order of any Court, or by a lawful requirement of any government or regulatory department, body, instrumentality, Minister, agency, recognised stock exchange or other authority which has jurisdiction over the recipient. Before such disclosure the receiving party must:
  - (a) use its best endeavours to promptly give the disclosing party details of the information to be disclosed and the law or order requiring disclosure; and
  - (b) notify the entity requiring the information that it is the Confidential Information of the disclosing party and request the entity to whom the disclosure is to be made to treat the information as confidential.

## 6. Intellectual Property

- 6.1 Unless specified otherwise in the Service Order, you acknowledge and agree that all Intellectual Property used or developed by us to provide Supplies remains the sole property of us and our licensors, regardless of whether that Intellectual Property was created in connection with this Agreement.
  - 6.2 Unless agreed otherwise by the parties in writing:
    - (a) all third party software supplied to you by us is licensed to you on the terms imposed by the third party owners of that software and is not licensed to you by us under the terms of this Agreement; and
    - (b) subject to clause 6.2(a), we grant you a license to use any of our Intellectual Property subsisting in a Supply solely for your internal business purposes and not for use on behalf of or for the benefit of any third party.
  - 6.3 You grant us an irrevocable licence to use, reproduce, modify and adapt any material you give us access to, to the extent that such use, reproduction, modification or adaptation is reasonably required to provide the Supplies in accordance with this Agreement.
  - 6.4 We may suspend the performance of our obligations under this Agreement if any third party alleges that any use, reproduction, modification or adaptation referred to in clause 6.3 infringes the rights of a third party.
- ## 7. Fees and Payments
- 7.1 You must pay us the Fees in accordance with this clause 7 or as otherwise provided in the Service Order.
  - 7.2 We may make an additional charge for the time of our employees to travel to and from a Site to perform on site services and also recover all associated reasonable costs including travelling, accommodation (if applicable) and living expenses.
  - 7.3 We may charge you additional fees at our then current time and materials rates if we are asked to provide Supplies that are not covered by the terms of an existing Service Order.
  - 7.4 You must pay each of our invoices by the due date specified in the invoice.
  - 7.5 You must pay us interest on any amount due and not paid by you within the time required by this Agreement

at the rate of 12% per annum, calculated and compounding monthly.

- 7.6 To the full extent permitted by law, any Fees payable in advance are non-refundable.
- 7.7 Unless specified otherwise in the Service Order, we may vary the Fees, including the frequency of the Fees, on no less than 30 days prior written notice.
- 7.8 You may terminate a Service Order on no less than 30 days prior written notice if you are unwilling to accept any increase in our Fees notified under clause 7.7, unless we agree to waive the increase within 14 days of receipt of your notice. Any such termination will not affect the rights or obligations of either party under any Service Order to which the Fee increase does not apply.

## 8. Warranties

- 8.1 You warrant and it is a condition of this Agreement that our provision of the Supplies will not infringe the rights of any third party whose property (including Intellectual Property) you provide us with access to, or refer us to, in order to comply with our obligations under a Service Order.
- 8.2 You indemnify us, our related bodies corporate and their and our Personnel against any Loss arising in connection with your or your Personnel's use of the Supplies, breach of this Agreement (including clause 8.1), violation of any law or infringement of another's rights or any allegation referred to in clause 6.4.
- 8.3 To the maximum extent permitted by law, our sole liability with respect to any goods or services provided to us by a third party and resupplied to you under this Agreement, is to use our best endeavours to pass on the benefit of any warranty provided to us in relation to the relevant good or service to you.
- 8.4 To the maximum extent permitted by law, we exclude all representations, warranties, terms and conditions, whether express or implied (and including those implied by statute, custom, law or otherwise), except as expressly set out in this Agreement.

## 9. Termination and Suspension

- 9.1 Without limiting our other rights, we may suspend the performance of our obligations under the Service Order if you fail to pay any amount when due or if we are otherwise entitled to terminate the Service Order.
- 9.2 We may terminate the Service Order immediately by written notice to you if at any time:
  - (a) any amount payable by you under this Agreement remains outstanding for 30 days after request by us for payment of that amount; or
  - (b) you commit a breach of, or fail to perform any or all of, your obligations under this Agreement and do not remedy that breach or non-performance (if capable of remedy) or make reasonable compensation in money (if not capable of remedy) within 30 days after receipt of notice requiring you to do so.
- 9.3 You may terminate the Service Order with immediate effect by written notice to us if we commit a breach of, or fail to perform any or all of, our material obligations under the Service Order and do not remedy that breach within 30 days after receipt of notice requiring us to do so.
- 9.4 A party may terminate the Service Order with immediate effect by written notice to the other party if that other party suffers an insolvency event.
- 9.5 Termination of the Service Order in accordance with clauses 9.2-9.4 terminates this Agreement with respect to that Service Order and in no way limits or prejudices any right or remedy that either party may have as a result of any breach of this Agreement or that Service Order, and does not serve to terminate any other Service Order.

- 9.6 Termination of this Agreement for any reason does not affect the rights and obligations of either party arising prior to termination. Clauses 5, 6.3 7.4-7.6, 8, 9.5, 9.6, 10, 12 and 13 survive termination of this Agreement.

## 10. Limitation of liability

- 10.1 To the maximum extent permitted by law, our entire liability for a breach of any term, condition or warranty implied by law and that cannot be lawfully excluded, is limited to any one or more of the following, at our option:
  - (a) if the breach relates to goods: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; or
  - (b) if the breach relates to services: the supplying of the services again; or the payment of the cost of having the services supplied again.
- 10.2 Subject to clause 10.1 and to the maximum extent permitted by law, we have no liability to you for any Consequential Loss, however caused (including by breach of contract, negligence, other tort or breach of statute), which is suffered or incurred in connection with or relating to this Agreement or otherwise arising out of the relationship between the parties, whether or not we were aware or should have been aware of the possibility of such loss or damage.
- 10.3 Subject to clause 10.1, and to the maximum extent permitted by law, our total liability to you for any and all Loss (including Consequential Loss to the extent it cannot be excluded under clause 10.2), however caused (including by breach of contract, negligence, other tort or breach of statute), which is suffered or incurred by you in connection with or relating to any Service Order or otherwise arising out of the relationship between the parties created thereunder, is limited to \$500.
- 10.4 Any liability we have to you arising with respect to any goods or services or in connection with this Agreement shall extend only to (and you shall, in respect of that liability, be entitled to have recourse only to) the assets of the Hyve Services SP. For the avoidance of doubt, you shall in no circumstances have any recourse in respect of any liability arising hereunder or in connection with this Agreement to the general assets of TMI SPC or to the assets of any other segregated portfolio of TMI SPC.

## 11. Force Majeure

- 11.1 Each obligation of a party, other than the obligation to pay money, will be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by a circumstance beyond the reasonable control of the party including labour disputes, fire, floods, explosions, riots, civil disturbances, war, terrorism, unforeseeable weather conditions, natural disasters, direct government action or regulation, or acts of God that renders impossible a party's ability to perform its obligations under this Agreement (**Force Majeure**).

## 12. General

- 12.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 12.2 Any notice is effective for the purposes of this Agreement upon delivery to the recipient, or production to the sender of a facsimile or email transmittal confirmation report.
- 12.3 We may novate, assign or sub-contract our rights and obligations under this Agreement.
- 12.4 You must not novate, assign or sub-contract your rights or obligations under this Agreement.

- 12.5 Unless stated otherwise, all Fees and other charges are stated exclusive of any sales, value-added, or similar tax which may be imposed in your location, which you must also pay if we are required to charge or collect it.
- 12.6 Except in accordance with this Agreement, you must not contract, employ or otherwise engage the services of any of our Personnel, either directly or indirectly, during the term or for a period of twelve months after the expiry or termination of this Agreement.
- 12.7 This Agreement is governed by and construed under the law in the Cayman Islands and the parties submit to the non-exclusive jurisdiction of the Courts in the Cayman Islands.
- 12.8 Any failure or delay by any party to exercise any right under this Agreement does not operate as a waiver.
- 12.9 Any provision of this Agreement that is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

### 13. Definitions and interpretation

- 13.1 In this Agreement, unless the context requires otherwise:

**Agreement** means these Supply Terms, the applicable Service Order and any other document executed by the parties that incorporates these Supply Terms;

**Business Day** means any day on which banks are open and conduct normal trading operations in George Town, the Cayman Islands, other than a Saturday or Sunday;

**Business Hours** means the hours between 9am and 5pm on a Business Day;

**Commencement Date** means the date of the Service Order or such other date specified in the relevant Service Order;

**Confidential Information** means the terms of this Agreement and any material or information of a confidential nature, whether received before or after the date of this Agreement, including details of suppliers, customers, business practices and plans provided by or emanating from a party (**the disclosing party**) to the other party (**the receiving party**) in connection with this Agreement, including material incorporating or derived from any such material or information, but excludes material or information which:

- (a) is at the time of disclosure, or subsequently becomes, material or information in the public domain otherwise than by a breach by the receiving party of a confidentiality obligation;
- (b) was or becomes known by a party independently of the other party, otherwise than by any breach of a confidentiality obligation owed by a third party to the disclosing party;
- (c) is independently developed by the receiving party, as evidenced by written record; or
- (d) is assigned by the disclosing party to the receiving party in accordance with the terms of this or any other agreement;

**Consequential Loss** means any indirect, incidental, special, economic or consequential loss, cost or damage, loss of business profits, revenue or opportunities, business interruption, loss of business information (including computer data), loss of business, loss of anticipated savings, loss of goodwill or loss due to delay;

**Fees** means the amounts payable to us by you, as set out in a Service Order or as otherwise notified to you by us in accordance with this Agreement;

**Intellectual Property** means any industrial or intellectual property (whether in material form or not) or rights of a proprietary nature, including any copyright, invention, patent, design, trade mark, service mark, domain name, semiconductor, idea, confidential information, trade secret, know-how, database or any thing copied or derived from them;

**Loss** means claims, losses, costs, expenses and damages (including Consequential Loss and legal costs and disbursements on a solicitor and own client basis) sustained or incurred, whether directly or indirectly or consequentially or in any other way;

**Person** means a legal entity, including an individual or a company;

**Personnel** means, in respect of a person, that person's officers, employees, contractors and agents;

**Service Order** means any written communication confirming agreement by us to supply goods or services requested by you;

**Site** means any location at which the Supplies are to be provided;

**Supplies** means the goods and services to be supplied by us as specified in a Service Order;

**Supply Terms** means this document;

**We or us** means TMI SPC on behalf of Hyve Services SP; and

**You** means the Person placing the Service Order with us.

- 13.2 In this Agreement unless the context requires otherwise:

- (a) clause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is defined its other grammatical forms have a corresponding meaning; and

the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it.