

# Marks & Clerk Hong Kong

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## Our Terms of Business with You

### Background

Marks & Clerk Hong Kong (“M&C”) is a general Hong Kong partnership and is registered in Hong Kong under Business Registration number 32891568. A list of partners’ names is open to inspection at our registered office at Level 9, Cyberport 1, 100 Cyberport Road, Pokfulam, Hong Kong. M&C is a firm of patent and trade mark attorneys. The following terms (“these Terms”) are our standard terms of business upon which we will carry out all professional services on your behalf. These provisions are designed to assist us in providing you with an efficient and effective service and will form the basis of our ongoing relationship.

### 1. The Basis of Our Business Relationship with You

- 1.1 These Terms shall apply to all matters in respect of which we accept instructions from you to perform professional services (“Services”).
- 1.2 By sending us instructions and/or allowing us to start performing the Services you shall be deemed to request that we perform Services for you on the basis of these Terms. If we agree to perform any such Services then there shall be a contract between us, and the contract will be governed by these Terms. We shall not, however, be obliged to accept any such instructions. Each matter in respect of which we perform the Services may at our option be treated as a separate contract between you and us.
- 1.3 Any change to these Terms which may be agreed between you and us must be confirmed in writing by us to you in order to be effective. Any decision by us not to enforce any of these Terms shall not prejudice our rights under these Terms at any time. Subject to these Terms, we will always proceed on the basis that our overriding duty to you is to do whatever we consider is necessary to properly protect and preserve your rights.
- 1.4 Subject to any variation in accordance with these Terms, every contract between us will be subject to these Terms to the exclusion of all other terms and conditions (including any terms or conditions which you purport to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).
- 1.5 In these Terms, “the Firm”, “we” and “us” means M&C. There are a number of Marks & Clerk group firms around the world which are qualified to practice in different jurisdictions. We may engage these group firms to assist us in providing the Services to you but we shall remain responsible for their actions, unless you enter into separate legal terms with another group firm.
- 1.6 “You” and “the client” are our client, being the person, firm, body or company who instructs us and purchases Services from us.

### 2. Our Obligations

- 2.1 All of the partners of M&C and qualified staff must comply with the respective codes of professional conduct issued by those professional bodies of which they are members.
- 2.2 We endeavour to practise competently, conscientiously and objectively, to put your interests foremost while observing the law and our duty to any court or tribunal and to avoid conflicts of interest. However, you should note that, due to the size and breadth of our practice, we may act for competitors. Please see Condition 15 for more details on our conflicts of interest policy.
- 2.3 Our advice and Services are provided to you as our client for your benefit only and may not be used or relied upon by anyone else. We do not owe a duty of care to associated persons, companies or other entities.

### 3. Instructions

#### 3.1 Identity of the client

- 3.1.1 It is important that we are able to identify who is formally our client. We shall be entitled to assume, unless we agree otherwise in writing with you, that the person (including an individual, firm or company) providing us with the initial instructions in relation to a matter is our client. For example, if we accept instructions from lawyers, patent attorneys or agents (whether in Hong Kong or abroad) they, and not the persons for whom they act, will be our client and responsible for settlement of all our invoices and for reimbursement of all our costs and expenses incurred in carrying out their instructions.
- 3.1.2 We may, if the client wishes us to, agree to render invoices to and accept payment from another entity (for example, another company in the same group). However, responsibility for making such payment remains with our client.
- 3.1.3 In the case of joint applicants or proprietors we will (in the absence of specific written instructions from you to the contrary) report to and accept instructions from the first named applicant or proprietor only. Nevertheless, all applicants/proprietors have joint and several responsibilities for payment of our charges and costs.

## **3.2 New clients and Money Laundering Regulations**

### **3.2.1 New clients and start-up companies**

We welcome the opportunity to work with new clients and start-up companies. For all new clients, our policy is to seek adequate funds on account in advance of providing any Services. In addition, for newly formed limited companies, we expect the directors to be personally responsible for our reasonable charges and costs incurred in accordance with instructions made on behalf of the company. We may ask the directors to sign an undertaking to this effect.

### **3.2.2 Money Laundering**

In order to comply with Anti Money Laundering Regulations and parallel legislation in many other countries, it is necessary for us to undertake certain investigations into new clients and to report to the relevant authorities any activities deemed suspicious. By instructing us, you agree that we are bound by this legislation and that you will make no claim against us and will hold us harmless for any loss or damage which results from our compliance with those regulations or any actions resulting therefrom.

## **3.3 Timing and form of instructions**

3.3.1 We rely on clients to give us timely, complete and accurate information and instructions. Misunderstandings can occur with oral instructions; although we will normally act on oral instructions in an emergency, we do require all oral instructions to be confirmed in writing.

3.3.2 Intellectual Property Offices often impose time limits and failure to meet these limits can be fatal to the IP rights concerned. We accept no liability if you do not provide instructions that are clear, complete and early enough to allow us to act within official time limits. We will endeavour to inform you of time limits and of actions or instructions that are required, but we do not undertake to give reminders.

3.3.3 If we receive late instructions from you, we may not be able to implement your instructions in time and we shall have no liability for any loss which may then arise. In the event of late instructions or late payments to us, urgency charges may be incurred by us that we shall pass on to you.

3.3.4 You agree that if we act on the instructions of your authorised agent, solicitor or other adviser, then we are entitled to rely upon all the information and instructions given to us by that person until we receive your written signed instructions to the contrary.

## **3.4 Overriding instructions not to let rights lapse**

We shall assume that our overriding instructions are not to let your rights lapse without specific instructions so to do. There may be occasions when a third party instructed by us on your behalf has to take urgent action thought to be in your best interests without recourse to this Firm or to you. Equally, there may be occasions when we have to take urgent action thought to be in your best interests without recourse to you. In either instance, such action will be within the terms of the above overriding instructions and you will be liable for costs incurred as a result.

## **3.5 Updating information**

It is important that you inform us promptly of any change of address, telephone and fax numbers, email address and/or other contact details, and of any change of ownership of your patent or other relevant intellectual property rights. Many such changes have to be officially registered. Please remember that the obtaining of patents, trade marks and design rights can take many years. No responsibility can be accepted for any loss of rights in any case where you have failed to inform us of such changes.

## **3.6 Electronic Communications**

3.6.1 We will normally communicate with you by email, fax or post. Given that emails sent over the Internet may lack security and jeopardise confidentiality, we can accept no liability for non-receipt or late receipt by you of such communications or for any corruption in the information communicated to you or its disclosure to other parties as a result of the interception of such communication. We would recommend that you use a password-protected account to mitigate against some of these risks. Please notify us in writing if you do not consent to the use of email.

3.6.2 Although we regularly carry out virus checks, we advise you to carry out your own virus checks on any communications (whether in the form of computer disc, email, Internet or otherwise). We accept no liability (including arising from our negligence) for any viruses that may enter your system or data by these or any other means.

## **4. Instruction of Third Parties to Act on Your Behalf**

4.1 As part of carrying out your instructions, it may be necessary for us to instruct third parties (e.g. foreign lawyers or patent agents) to act on your behalf. We may either instruct such third parties directly on your behalf, or require you to sign a power of attorney or similar appointment to engage such third party directly.

4.2 Such third parties are not part of this Firm. Whilst we shall endeavour to select third parties whose performance and expertise we regard as being of good quality, we will not be liable for any losses, liabilities, costs or expenses arising as a result of any default or negligence on the part of any such third parties.

4.3 Unless otherwise specifically agreed by us, the Services will not extend to issuing you with reminders for and processing the renewals of any of your registered rights. However, our standard practice is to pass details of all

- cases we handle requiring such renewals to specialist renewal agents and, unless you notify us in writing to the contrary, you hereby authorise us to instruct CPA Global, St Helier, Jersey, to remind the registered proprietors concerned or their appointed representatives of due dates for payment of renewal fees, and who will invoice such proprietors or their appointed representatives for their services under their current terms of business.
- 4.4 CPA Global pay a client management fee on all renewals work which we refer on to them in accordance with Condition 4.3 above. The client management fee is for Services relating to the transfer of data to CPA; providing internal liaison staff to handle client and CPA queries, and resolve any issues that might arise; liaison services between us, CPA and clients; and maintaining in conjunction with CPA an accurate record of client and case data. The client management fee is calculated on the amount payable by the referred party to CPA Global for their services (excluding official fees paid to Intellectual Property Offices and third party costs incurred by CPA) (the "referred amount") and is paid in respect of all renewal fees paid by CPA for cases referred to them by us. The exact percentage varies depending on total volume of work referred by Marks & Clerk group firms, but it is typically between 30% and 46% of the referred amount. The client management fee is not paid to this Firm but to a separate partnership comprised of members and former members of this Firm or other Marks & Clerk group firms. In permitting us to refer this renewals work to CPA Global, you consent to the payment of this client management fee. If you wish us to transfer renewals work to another renewals provider, charges will be applied to cover the cost of the transfer. These can be discussed with you if and when you wish to do this.
- 4.5 In certain matters we may, in our discretion, outsource work such as typing, reproducing / photocopying documents, or obtaining transcripts of hearings, and certain support functions such as information technology. We may occasionally ask other companies or people to provide services on matters we are handling, to ensure that Services are provided promptly. We may also refer any matter, document, information or our files to counsel, an accountant, expert or costs draftsman for specialist advice. You agree that we may do so, whether we do so on your behalf or on our own behalf. We will always seek to secure confidentiality with these outsourced providers. If you do not want your matter outsourced, please tell us as soon as possible.
5. **Authority**  
For such period as you instruct us to carry out Services on your behalf, you hereby give us express authority to complete and sign in your name such forms or other documents as are necessary or desirable to carry out your instructions. You agree to indemnify us in respect of all costs, claims, demands and expenses that may result from our proper exercise of that authority.
6. **Professional Fees**
- 6.1 **Our Charges**
- 6.1.1 Our charges are principally based on the amount of our professional time spent on the matter, although other factors may also be taken into account. Such factors may include (but are not limited to) the size and complexity of the matter and the degree of urgency involved. We reserve the right to adjust our standard charges if highly specialised knowledge is required, or if the matter is complex and/or urgent. Fixed charges may be assigned to specific tasks (e.g. filing a patent application).
- 6.1.2 All actions and attention by us in providing the Services are chargeable, including (for example) both incoming and outgoing telephone calls, travelling, the sending of reminders and reporting to you on communications which we may receive from Intellectual Property Offices, foreign attorneys and other specialist providers, as well as in acting for you generally.
- 6.1.3 Our hourly rates are primarily based on the seniority and experience of the professional staff involved. These rates are reviewed periodically. Our charges are calculated at the rates which are current when the Services are provided. Details of those rates are available on request.
- 6.2 **Payment of Disbursements**
- 6.2.1 We will charge you for any disbursements incurred by us on your behalf. These disbursements may include (but are not limited by) Intellectual Property Office fees, counsel's fees, Court fees, the costs of any experts or other agents (including any foreign lawyers, agents or attorneys), photocopying costs, courier, travel and meeting expenses and certain telephone and fax charges.
- 6.2.2 You should appreciate that foreign attorneys' charges and official fees are outside our control since they may be changed without notice and in the case of foreign matters vary with exchange rate fluctuations.
- 6.2.3 Where we instruct foreign attorneys, agents or lawyers on your behalf, it is our usual practice to process debit notes received from such foreign attorneys including reviewing their appropriateness, and managing their payment. These disbursements will typically be invoiced to us in a variety of different currencies. We convert all foreign attorney disbursements denominated in non-HKD currencies to HKD at the time at which such disbursements are processed by us, at a spot exchange rate determined by us. This is the case regardless of the currency in which we are to bill you. We also levy a fee of between 5% and 11% as a handling charge on all such disbursements. This fee is in respect of Services relating to handling, processing and paying such debit notes and also covers exchange rate risk.
- 6.2.4 Where we process non-HKD denominated disbursements other than those referred to in paragraph 6.2.3 we convert these to HKD (regardless of the currency in which we are to bill you) at an exchange rate selected by us at the point at which such disbursements are processed. The selected exchange rate is typically determined by increasing a spot rate selected by us by 5% to cover the risk of exchange rate fluctuations which may be incurred between the time of processing and paying the disbursement.

- 6.2.5 We usually render invoices in HKD. We may agree to invoice you in another currency (e.g. US dollars) and, if we do so agree, our charges will be determined in HKD then converted into the billing currency at an exchange rate determined by us at the point of billing. The selected exchange rate is typically determined by increasing a spot rate selected by us by 5% to cover the risk of exchange rate fluctuations which may be incurred between the time of billing and our receiving payment.
- 6.2.6 The disbursements payable for the supply of photocopying, courier, travel and meeting expenses and certain telephone and fax services are charged for at a rate which best reflects our underlying costs and our costs in making the service available to you.

### **6.3 Estimates**

- 6.3.1 If requested, and where possible, we will give estimates of future charges. They will be given in good faith based on knowledge existing at the time, but they are not binding unless we expressly agree otherwise, as charges may be affected by matters beyond our control and the amount of work involved in providing Services often cannot be accurately forecast.
- 6.3.2 If during the course of carrying out the Services it becomes apparent to us that our actual charges are likely to significantly exceed our estimate, we will endeavour to seek your permission before exceeding our estimated charges.

### **6.4. Payment on Account; Client Accounts**

- 6.4.1 We may require you to make a payment or payments to us in advance on account of our fees and anticipated disbursements at any time. Any such amount is not an estimate of our fees, nor does it limit them. You authorise us (a) to retain any such payment in advance until the end of the matter either to be applied against our final invoice or returned to you or (b) to apply such payment in advance against interim invoices which we may submit from time to time. We may ask for further payments on account whether or not we have exhausted the payments already made. If further payments on account are not made when requested, we may suspend the provision of Services or cease acting.
- 6.4.2 In view of the typically small sums and short periods of time during which such payments in advance are held and the requirement for immediate access to the those payments, we pay no interest on these sums and by providing us with payments in advance you agree to this term.
- 6.4.3 We do not generally accept payment in advance for other purposes. If you wish to place money on account with us for other purposes, for example in escrow or on account of a consideration in a substantial transaction, separate arrangements will need to be agreed with you to achieve a fair outcome.
- 6.4.4 Upon substantial completion of a matter, we will arrange to return any funds we are holding on your behalf in our client account to you.

### **7. Payment**

- 7.1 We are entitled to send you invoices for fees and disbursements (whether incurred or to be incurred) and for any value added tax or other tax payable thereon at regular and appropriate intervals as we deem fit and on an interim basis. You agree to pay such invoices by no later than thirty days after they are issued ("the due date") and free from any deductions, set-offs, withholding, discount, or abatement. Time for payment of our invoices is of the essence.
- 7.2 If any sum due from you to us is not paid on or before the due date for payment then all sums then owing by you to us shall become due and payable immediately and, without prejudice to any other right or remedy available to us, we shall be entitled to:
- 7.2.1 cancel or suspend our performance of the Services until arrangements as to payment or credit have been established which are satisfactory to us;
- 7.2.2 charge you:
- (i) interest calculated on a daily basis on all overdue amounts (both before and after judgment) until actual payment at the HKD prime lending rate of HSBC in Hong Kong prevailing from time to time until payment is made in full; and
- (ii) the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.
- 7.2.3 in respect of all invoiced fees and disbursements which remain unpaid as well as Services provided and disbursements incurred but not yet invoiced, have a lien on all materials, inventions and documents in our possession, power or custody relating to any matter touching or concerning the contract for the Services. This means we are entitled to retain these materials until payment has been made.

### **8. Filing**

#### **8.1 Checking Files Transferred to us**

When files are transferred to us from other firms or organisations, they are usually accompanied by records of key data. We recommend that we check such information against the contents of the files and/or from public records. We will levy a reasonable charge for such checking. If you do not wish to instruct us to carry out such checks, we will have no liability for any errors contained in the files as they were received or for any losses incurred as a result of the errors contained in the files.

## **8.2 Ownership of Files**

Our files remain our property at all times, in accordance with recommended practice. However, if you no longer wish for us to provide Services to you and/or want to instruct other professional advisers, we will usually release the files once all outstanding charges have been paid and on receiving an undertaking that is satisfactory to us that we will be given free access to the files, if required. If no such undertaking is received, we will copy the file at your expense and release the copy file when all our charges have been paid.

## **8.3 Original Papers and Other Materials**

If you send us papers, samples or other materials, please tell us at the same time if you require them to be returned. Otherwise, we will incorporate them into our files.

## **8.4 Destruction of Files**

We may destroy our correspondence files, draft documents and other papers, including electronic copies, which are more than 6 years old. In the absence of contrary instructions, we will assume that you are content with this arrangement.

## **9. Confidential Information**

9.1 While providing Services to you, we shall gather information and documents which relate to you. In respect of information disclosed to us relating to you which is confidential ("Confidential Information") we undertake to you that we shall not at any time without your prior written consent: disclose any of the Confidential Information to any third party; or use any of the Confidential Information except for the purpose of providing Services to you.

9.2 No information shall be subject to any restrictions against disclosure or use under this undertaking which is or becomes public knowledge (other than through our default) or where disclosure is required by law or regulation.

9.3 Our duty of confidentiality is subject to the limitations set out in Condition 3.2.2 (Money Laundering) and Condition 4 (Instruction of Third Parties) and legal and/or regulatory requirements. You agree that the Firm may, if so required by our insurers, auditors or other advisers, provide them with information relating to you on a matter the Firm is acting or has acted for you.

9.4 In general, we recommend that you restrict the release of, and maintain strict control over, any information not already in the public domain connected with instructions we receive. We would be happy to advise on the desirability of releasing Confidential Information to the public in specific cases.

## **10. Data Protection**

10.1 We will process your personal data in accordance with our privacy policy, as may be updated from time to time. A copy of our current privacy policy is set out below:

### **10.2 Privacy Policy**

10.2.1 We are required to comply with the relevant data protection legislation wherever we obtain or use any personal data from clients (including names, addresses and any personal details).

10.2.2 We will use your personal data to provide the Services to you.

10.2.3 We may also use your personal data to send you information about our products and services or those of our associated legal practice, which may include sending updates and seminar invitations and to contact you from time to time with newsletters and other information about intellectual property matters and we will share this data with Marks & Clerk group firms.

10.2.4 If you do not wish us to use your personal data in this way, please notify us in writing.

10.2.5 We may pass your personal data, including details of your registered rights to CPA Global and attorneys acting on their behalf for the issue of renewal reminders unless explicitly instructed not to do so.

10.2.6 In the course of instructing foreign attorneys it will be necessary to pass details of you to enable them to prosecute applications, and take other actions on your behalf.

10.2.7 We will not use your personal data for any purpose other than that set out in our privacy policy without your consent unless we are entitled or required to do so by law or under a court or regulatory authority order.

## **11. Searches**

Any searches you request may be carried out by us, by Intellectual Property Offices or by an independent specialist searching firm. Due to the limitations and occasional errors in classifications, indices, computer databases and official records, no search can be guaranteed for comprehensiveness or accuracy. We will endeavour to point out any particular limitations when reporting search results and may recommend extending the search.

## **12. Indemnity for Threat of Infringement Proceedings**

Before we send any warning on behalf of a client to a third party, we ask the client to indemnify us against the risks of our being sued for making an unjustified threat of infringement proceedings. The aim of this request is to maintain our objectivity in contentious matters which would diminish if we were to become a party to any proceedings. We may refuse to act for clients who do not provide the requested indemnity.

**13. Notices and Forms of Written Communication Between You and Us**

All notices and forms of written communication between you and us during the subsistence of the contract for the Services shall either be on paper delivered by post or sent by electronic means of message transmission. If such notices and communications are sent by electronic means, then they shall be deemed to have been received at the time of transmission by us. In the event of a difference between the time of receipt and the time of transmission recorded on our equipment, the time specified by our equipment will be deemed the time of transmission.

**14. Privilege**

14.1 In general, communications between a patent attorney, trade mark attorney or solicitor and their client are protected by legal professional privilege. This means that others, including the courts, are not entitled to discover the content of such communications where they concern professional advice. Please note that not all employees or representatives of the client are to be treated as the client for the purposes of legal advice privilege and the privileged status of a letter or other document can be lost if it, or its contents, are disseminated to persons other than the addressee of the document.

14.2 In rare circumstances the courts may rule that such privilege is lost or does not apply. In that event we accept no liability in respect of any loss whatsoever incurred by you or any other party as a direct or indirect consequence of the loss or absence of privilege.

**15. Conflicts of Interest**

15.1 Because of the nature of our profession and our professional business, it is not uncommon for patent and trade mark attorneys to be acting at any one time for two or more clients who are commercial competitors. We will not knowingly act for or against another client in a matter involving an active dispute with you without your written approval and the written approval of the other client, but you agree that we will not be prevented from acting for any of your competitors merely because they are competitors.

15.2 Appropriate procedures and arrangements exist to ensure that advice and opinions you receive are wholly independent of and do not make any use of knowledge or information confidential to any third party and we will not make use of any information confidential to you to the advantage of any third party.

**16. Complaints**

16.1 We value our good relationships with our clients. However, we accept that from time to time, difficulties and misunderstandings do arise. If you have any problems, or are dissatisfied with the Services we have provided you with, you have a right to complain. Our policy is to look at client complaints objectively and take a constructive approach to reaching a satisfactory conclusion.

16.2 You should feel free to discuss your concerns with the member of our professional staff responsible for providing Services to you. If, after such discussions, you feel that the matter has not been adequately dealt with, or any invoice is unreasonably high for the Services involved, you should contact the Managing Partner of this Firm.

**17. Termination**

17.1 We will continue to provide Services to you until any of the following events occur:

- (a) we finish the Services you have instructed;
- (b) your invoice remains unpaid for a protracted period;
- (c) we consider that it is not in our mutual best interests for us to continue to provide Services to you;
- (d) you notify us that you have decided you no longer wish us provide Services to you;
- (e) you (if an individual or a partnership) offer to make any arrangements with or for the benefit of your creditors, or a petition of bankruptcy is presented in relation to you or any of your partners; or
- (f) you (if a limited company) are deemed to be unable to pay your debts or you call a meeting to pass a resolution to wind up the company, or such a resolution is passed, or an administrator or receiver is appointed to all or any part of your business or property.
- (g) you become involved in similar processes to those in (e) and (f) under corresponding legislation abroad.

17.2 Irrespective of any termination or suspension of the Services in accordance with these Terms, you shall pay us at the contract rate for all Services provided up to and including the date of suspension or termination and the termination of this contract, or any contract, for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any sum owing or to become owing to the other under such contract or contracts.

17.3 You will accept responsibility for making alternative arrangements for compliance with all due dates of action, payment of official fees and the taking of any official steps necessary to preserve your rights in relation to the matters which we have handled for you prior to such termination.

**18. Limitation of Liability**

18.1 Your relationship is with M&C. M&C will have exclusive liability for carrying out the Services and for any negligent act or omission by us in the course of providing those Services. You agree that no individual partner or employee of M&C will have any personal liability for those Services. You also agree that a partner or employee of M&C signing in his own name any letter, email or other document in the course of providing Services does not imply he is assuming any personal liability separate to that of M&C. Except for acts of fraud you agree that any claim brought in respect of any matter on which we were instructed will be made against M&C and not against any individual partner or employee of M&C.

- 18.2 You agree that we shall have no liability nor shall we be deemed to be in breach of any duties or obligations owed to you if at any time we are prevented, delayed or hindered in complying with such duties and/or obligations by reason of any circumstances beyond our reasonable control.
- 18.3 Nothing in these Terms excludes or limits the liability of us for death or personal injury caused by our negligence, or for fraud, fraudulent misrepresentation or any other liability which cannot be limited or excluded by applicable law.
- 18.4 We shall not be liable to you, whether in contract, tort (including negligence), breach or statutory duty or otherwise for any indirect or consequential loss arising from the Services or otherwise.
- 18.5 Subject to the paragraphs above, M&C's total liability in connection with any engagement (whether arising out of breach of contract, negligence, breach of fiduciary duty or otherwise) shall not exceed £5 million. Our liability is subject to an overall cap equivalent to the level of our professional indemnity insurance on the date we notify our professional indemnity insurers of a potential claim against us (whether or not we also notify you) or, if lower, the level of our professional indemnity insurance on the date you bring any claim. All claims which are to be considered as a single claim for the purposes of our indemnity insurance are to be aggregated in applying that limit, apportioning the capped liability between the aggregated claims in a just and equitable manner.
- 18.6 If we are jointly, or jointly and severally, liable to you with any other party we shall only be liable to pay you the proportion of your losses which is found to be fairly and reasonably due to our fault. We shall not be liable to pay you the proportion which is fairly and reasonably due to the fault of another party.
- 18.7 We shall not be liable for any losses, penalties, interest or additional tax liabilities resulting from, or caused by, the acts or omissions of any other person or due to the provision to us of incomplete, misleading or false information or if they are caused by a failure to act on our advice or a failure to provide us with relevant information.
- 19. General**
- 19.1 Nothing in the contract shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 19.2 If at any time any one or more of the conditions of the contract (or any sub-condition or paragraph or any part of one or more of these Terms) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the contract and the validity and/or enforceability of the remaining provisions of the contract shall not in any way be affected or impaired as a result of that omission.
- 19.3 A person who is not a party to the contract (including any employee, officer, agent, representative or sub contractor of either party) shall not have the right to enforce any term of the contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this condition. Parent entities of M&C shall have the right to enforce any term of the contract without such agreement.
- 19.4 These Terms, and any instructions agreed by us in writing, constitute 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.
- 19.5 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms or any instructions agreed by us in writing. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.
- 19.6 We shall be entitled to update these Terms periodically and shall notify you of any changes to these Terms before they take effect. Your continuing instructions shall signify your agreement to these changes.
- 20. Governing Law and Jurisdiction**
- Hong Kong law shall apply to the construction and interpretation of our contract with you and the Hong Kong courts shall have exclusive jurisdiction to resolve any disputes arising under it.

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I hereby agree to the Terms of Business set out above.

**Signed on behalf of:**

**Name:**

**Position:**

**Date:**