

Terms and Conditions

Standard Terms and Conditions for the Supply of Services

These Terms and Conditions may only be varied with the written agreement of Davis-Allman Business Development. These Terms and Conditions shall apply to all contracts for the supply of Services by Davis-Allman Business Development to the Customer to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document.

1. Definition and Interpretation

1.1. In these Terms and Conditions the following words shall have the following meanings:

"Agreement" means the agreement between Davis-Allman Business Development and the Customer incorporating either:-

- (i) the Schedule for the Supply of Services and these Terms and Conditions; or
- (ii) the Outline Schedule for the Supply of Services, these Terms and Conditions, and an notification of acceptance from both Davis-Allman Business Development and the Customer

"Background IPR" means rights in any Intellectual Property, excluding Foreground IPR, owned or controlled by any party arising before commencement of the Services, or in parallel independently of the Services, which is necessary for carrying out the Services.

"Confidential Information" means any information given to or obtained by Davis-Allman Business Development from the Customer, or by the Customer from Davis-Allman Business Development, under the Agreement relating to the Services and designated as confidential in writing by the party owning the information.

"Davis-Allman Business Development" shall mean the Business Development business activities of Davis-Allman LLC.

"Customer" means the person or persons to whom the Agreement is issued. Where the Customer consists of more than one person, the obligation of those persons in respect of the Agreement shall be joint and several.

"Foreground IPR" means rights in any Intellectual Property obtained, found, produced, devised, developed, or made during or generated in the course of the carrying out of the Services.

"Intellectual Property" means any copyright, design right, trademark, trade name, know-how, patentable invention, and all intellectual property, including Technical Information, the rights to which are protectable by law; and "Intellectual Property Rights" and "IPR" shall mean any rights in Intellectual Property.

"Price" means the charges, taxes and disbursements specified in either the Schedule for the Supply of Services or the Order Form.

"The Services" means the services to be supplied by Davis-Allman Business Development to the Customer as specified in the Agreement.

"Technical Information" means and includes inventions, discoveries (and applications thereof), designs, drawings, techniques, processes, formulae, reports, specifications, practices, procedures, instructions, software and other technical information and data of any kind in whatever form.

"Terms and Conditions" means the Davis-Allman Business Development Standard Terms and Conditions for the Supply of Services.

- 1.2. Clause headings shall not affect the interpretation of these Terms and Conditions.
- 1.3. Unless the context otherwise requires, references in these Terms and Conditions:
 - 1.3.1. to "person" or "third party" include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
 - 1.3.2. to one gender include all genders, and reference to singular include the plural and vice versa;
 - 1.3.3. to any statute, statutory provision or regulation, are references to that statute, statutory provision or regulation, as from time to time amended, extended or re-enacted.

2. The Services

- 2.1. Davis-Allman Business Development agrees to provide the Services to the Customer in accordance with these Terms and Conditions and any Special Conditions agreed between the parties.
- 2.2. In carrying out the Services Davis-Allman Business Development undertakes to the Customer that it shall use its reasonable endeavours to undertake the Services in accordance with good commercial practice and within the time period agreed between the parties and at all times exercising reasonable skill and care.
- 2.3. Davis-Allman Business Development cannot undertake to provide the Services or services of this type for the Customer exclusively.
- 2.4. All materials and items of equipment which are to be supplied by the Customer for the purpose of the Services shall be delivered, assembled, maintained, dismantled and collected at the Customer's cost and in accordance with the requirements of the Davis-Allman Business Development staff responsible for the Services. All equipment and other accessories (except those owned and provided by the Customer) and all materials obtained by Davis-Allman Business Development and/or used for the purposes of the Services shall remain the property of Davis-Allman Business Development.
- 2.5. If the Services involve the Customer's employees attending Davis-Allman Business Development's premises, the Customer shall remain responsible for their salaries and other associated costs. The Customer will procure that such employees comply with all security, health and safety, and other relevant procedures whilst on Davis-Allman Business Development premises. Davis-Allman Business Development may at any time at its absolute discretion refuse to accept or continue to accept any particular employee of the Customer on its premises. Davis-Allman Business Development is under no obligation to allow the Customer's employees to witness the Services being carried out.
- 2.6. If the Services involve Davis-Allman Business Development's employees attending the customer's premises, the Customer shall provide at its cost whatever equipment and materials including software, data, and access to enable the Services to be carried out. The Customer is responsible for ensuring that Davis-Allman Business Development's employees are informed of all security, health and safety, and other relevant procedures to be observed on the Customer's premises. Davis-Allman Business Development is under no obligation to allow the Customer's employees to witness the Services being carried out.
- 2.7. No order for the supply of Services is binding on Davis-Allman Business Development unless and until it has been accepted by Davis-Allman Business Development in writing.

3. Warranties and Indemnities

- 3.1. The Customer shall provide Davis-Allman Business Development with all such information and materials as are necessary for Davis-Allman Business Development to carry out the Services in accordance with clause 2 above and the Customer warrants that all information provided by it or on its behalf to Davis-Allman Business Development will be accurate. The Customer further warrants that it will give Davis-Allman Business Development written notice of any legal or other hazards, known or suspected, by the Customer that might potentially arise in the use of such materials.

3.2. The Customer warrants that it has the necessary rights and is entitled to use or disclose for the purposes of the Services all Intellectual Property supplied by it to Davis-Allman Business Development for the purposes of carrying out the Services.

3.3. The Customer shall indemnify and keep indemnified on a full and unqualified basis Davis-Allman Business Development against any and all actions, claims, demands, costs, charges and/or expenses arising out of any loss or damage incurred by the reason of any infringement or alleged infringement by the Customer of any Intellectual Property right in relation to the Services.

4. Liability and Insurance

4.1. Except in the case of personal injury (including death) caused by the negligent or wilful act or omission of either party, or of any servant or agent of either party, the aggregate liability of either party to the other arising out of any breach or breaches of the Agreement shall not exceed the total amount payable by the Customer to Davis-Allman Business Development in accordance with the Agreement. The provisions of this clause 4.1 are without prejudice to the Customer's obligations under clause 3.3 above.

4.2. In the event of any breach or breaches of the Agreement by Davis-Allman Business Development, Davis-Allman Business Development shall not be liable to the Customer in respect of any resulting:

- 4.2.1. loss of profit, business, revenue, goodwill or anticipated savings;
- 4.2.2. indirect or consequential loss or damage.

4.3. The Customer shall be liable to Davis-Allman Business Development for any claim made against Davis-Allman Business Development as a result of any tort committed by the Customer's employees whilst on Davis-Allman Business Development premises.

4.4. The Customer shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of the Customer's indemnities or compensation obligations under the Agreement and shall at the request of Davis-Allman Business Development produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

5. Confidentiality

5.1. Davis-Allman Business Development shall not without the Customer's written consent disclose to any person other than the Customer or use otherwise than for the purpose of carrying out the Services:-

- 5.1.1. the nature of the Services or the results obtained; or
- 5.1.2. any secret or Confidential Information before or after the date of the Agreement concerning the Services or relating to any products or operations of the Customer providing that the information:
 - (i) is acquired from the Customer or is specific to the Customer's business; and
 - (ii) has not been developed or generated independently by Davis-Allman Business Development; or
 - (iii) has not been in Davis-Allman Business Development's possession prior to acquisition from the Customer; or
 - (iv) is not in the public domain at the time of disclosure to Davis-Allman Business Development, or at any time after its disclosure to Davis-Allman Business Development, through no breach of the Agreement by Davis-Allman Business Development; or
 - (v) is not required to be disclosed pursuant to any court order or statutory or other legal requirement.

6. Invoicing and Payment Terms

6.1. Payments of the Price shall be made within the period specified on Davis-Allman Business Development's invoices. Unless otherwise agreed in writing payment shall be made in US Dollars.

6.2. All payments shall be made by electronic transfer of funds. An administration charge of twenty-five US dollars will be made for any payments requiring administrative intervention.

6.3. All sums due from the Customer to Davis-Allman Business Development which are not paid on the due date (without prejudice to the rights of Davis-Allman Business Development under the Agreement) shall bear compounded interest at the rate of 4% over the U.S. Prime Rate.

6.4. All sums due from the Customer to Davis-Allman Business Development which are not paid on the due date (without prejudice to the rights of Davis-Allman Business Development under the Agreement) shall automatically be subject to an additional administration charge of fifty US dollars.

6.5. All sums due from the Customer to Davis-Allman Business Development which are not paid on the due date (without prejudice to the rights of Davis-Allman Business Development under the Agreement) shall bear any additional reasonable costs incurred by Davis-Allman Business Development in obtaining payment from the customer.

7. Publication

7.1. The results of the Services may be freely published by the Customer, but the Customer will not make any reference to Davis-Allman Business Development without obtaining prior approval in writing of each reference in its context, which approval shall not be unreasonably withheld.

7.2. The results of the Services may not be published by Davis-Allman Business Development without obtaining prior approval from the Customer in writing of each reference in its context, which approval shall not be unreasonably withheld.

8. Intellectual Property Rights

8.1. Subject to any third party rights other than by virtue of the Agreement, to the extent that the provision of the Services results in the creation of any Foreground IPR such Foreground IPR shall vest in Davis-Allman Business Development. Davis-Allman Business Development shall grant to the Customer a non-exclusive licence to use the Foreground IPR for the purposes of the Customer in the direct field of application for which the Services were carried out. The exact terms of any licence will be agreed through good faith negotiations between Davis-Allman Business Development and the Customer.

8.2. Ownership or title to any Background IPR shall not be affected by these Terms and Conditions or by the Agreement.

9. Force Majeure

Davis-Allman Business Development will not be held responsible for failure or delay in carrying out the Services due in whole or in part to any circumstances whatsoever beyond its reasonable control.

10. Termination

10.1. The Agreement may be terminated by Davis-Allman Business Development on giving three months written notice.

10.2. Either party may terminate the Agreement forthwith by written notice given to the other where: that other party commits a breach of the Agreement which the party serving the notice reasonably considers is not capable of remedy; or that other party has continued in any breach of the Agreement for more than 30 days after being warned in writing of such breach.

10.3. Davis-Allman Business Development may terminate the Agreement forthwith by written notice given to the Customer if:-

- 10.3.1. the Customer is a company, and the company passes a resolution to be dissolved or declared bankrupt or the court makes an order that it should be dissolved or declared bankrupt; or
- 10.3.2. the Customer being an individual at any time becomes bankrupt, or has a receiving order made against him or her or makes any composition or arrangement with or for the benefit of his or her creditors, or purports to do so; or

- 10.3.3. the Customer is a partnership and any partner thereof at any time becomes bankrupt, or has a receiving order made against him or her, or any partner or the partnership makes any composition or arrangement with or for the benefit of their creditors, or purports to do so.

10.4. If the Customer does not make payments in accordance with clause 6 above Davis-Allman Business Development reserves the right to cease the Services and, if it thinks fit, to terminate the Agreement forthwith by written notice given to the Customer.

11. Effect of termination

11.1. Termination of the Agreement shall not affect any obligation or liability of any Party which has accrued at the date of termination.

11.2. Except for clauses 3, 4, 5, 6, 7, 11, 17, 18 and except in respect of any other accrued rights, neither party shall be under any further obligation to the other.

11.3. Upon termination of the Agreement Davis-Allman Business Development may set off against any debt owed by the Customer to Davis-Allman Business Development, or the amount of loss and/or damage Davis-Allman Business Development have reasonably assessed as resulting from the termination of the Agreement, any sums otherwise due to the Customer.

12. Assignment and sub-contracting

12.1. The Customer shall not assign or sub-contract the Agreement or any part of it without the prior consent of Davis-Allman Business Development in writing, such consent not to be unreasonably withheld.

12.2. Davis-Allman Business Development may at any time, on reasonable notice in writing to the Customer, transfer or assign all or any rights and/or obligations under the Agreement.

12.3. Davis-Allman Business Development shall be free to subcontract or otherwise deal with the whole or any part of the Services.

13. Waiver, variation and representations

13.1. No delay by Davis-Allman Business Development in enforcing or expressing any right, either arising out of the Agreement or any right in respect of any breach of the Agreement by the Customer, shall constitute a waiver of such right.

13.2. No waiver by Davis-Allman Business Development of any breach of the Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

13.3. Any variation of any provision of the Agreement must be effected in writing and issued by Davis-Allman Business Development. No purported variation by any other means shall bind the Davis-Allman Business Development.

13.4. No statement in any publication issued by Davis-Allman Business Development constitutes a term of the Agreement, nor a representation in reliance upon which the Agreement has been entered into.

14. Legal Relationship

14.1. Nothing in the Agreement shall be construed so as to create a partnership or joint venture between the parties or have the effect of making any employee of the Customer a servant of Davis-Allman Business Development or of making any official of Davis-Allman Business Development an employee or servant of the Customer.

14.2. Neither of the parties shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.

15. Severability

If any part of the Agreement is unenforceable, such unenforceability shall not affect the enforceability of the remainder of the Agreement.

16. Notices

Any notices to be given under the Agreement shall be in writing and sent to the relevant address or addresses set out in the Agreement by hand, electronic mail transmission, or prepaid post. Such notices shall be deemed to be received at once if sent by electronic mail transmission and if sent by prepaid first class post within the United States shall be deemed to be served on the third business day after posting. If a notice is sent to or from abroad by prepaid mail it shall be deemed to be served on the fifth business day after posting.

17. Dispute resolution

17.1. In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration.

17.2. Upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.

18. Jurisdiction and Governing Law

The Agreement is subject to the law and to the exclusive jurisdiction of the courts of the United States and Greene County in the state of Missouri.

Document Details

Issue 01.00 30 Sep 2011

Base Directory

Admin\Business & Legal\Contracts

Documents & Files

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