

# ADAS TERMS AND CONDITIONS

## THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO CLAUSE 7 (LIMITATION OF LIABILITY)

### 1. Definitions and General

- 1.1 "ADAS": RSK ADAS Ltd, trading under the brand 'ADAS' and a wholly owned subsidiary of RSK Group Ltd.
- 1.2 "Client": any person, partnership or company whose request for the provision of services is accepted by ADAS.
- 1.3 "Conditions": these terms and conditions as amended from time to time in accordance with clause 2.3. and which constitute part of the Contract.
- 1.4 "Contract": the contract between ADAS and the Client for the supply of Services in accordance with these Conditions.
- 1.5 "Order": the Client's order for Services as set out in the Client's purchase order form, the Client's written acceptance of a quotation by ADAS, or overleaf, as the case may be, and which does not constitute part of the Contract.
- 1.6 "Services": the services supplied by ADAS to the client, as set out in the relevant specification or other agreed written form.
- 1.7 The headings in these Conditions shall not effect their interpretation.
- 1.8 For the avoidance of doubt RSK Group Ltd shall have no liability whatsoever to the Client under the Contract.

### 2. Basis of Contract

- 2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed accepted when ADAS issues written acceptance of the Order, at which point the Contract shall come into existence.
- 2.3 The Contract constitutes the entire agreement between the parties, and these Conditions shall apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, including those on the Order, or which are implied by trade, custom, practice or course of dealing. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of ADAS which is not set out in the Contract. No variation to the Contract shall be effective unless agreed in writing by ADAS.
- 2.4 Any quotation given by ADAS shall not constitute an offer, and is only valid for such period as is expressed on such quotation or, if no period is expressed, for 30 days.

### 3. Provision of Services

- 3.1 ADAS shall provide the Services in all material respects according to the written instructions received from the Client from time to time, provided that these instructions shall be compliant with these terms and conditions.
- 3.2 ADAS warrants to the Client that the Services will be provided using reasonable endeavours.
- 3.3 Where a member of ADAS' staff is named as the person to provide the Services ADAS shall be entitled, on giving reasonable notice, to use other staff of comparable skill and experience to supply the Services.
- 3.4 Unless otherwise agreed in writing ADAS may correspond by the Internet, e-mail or other electronic media. In such cases ADAS will take reasonable steps to safeguard the security of the information transmitted, but will not accept liability for its security and confidentiality beyond these steps.
- 3.5 ADAS shall use all reasonable endeavours to meet any performance dates agreed in writing between the parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services

### 4. Client's Obligations

- 4.1 The Client shall:
  - (i) co-operate with ADAS as ADAS reasonably requires in relation to the Services;
  - (ii) ensure that all information or instructions provided by or for him to ADAS are full and accurate and delivered to the agreed timescales;
  - (iii) provide such information and documentation as ADAS reasonably requires;
  - (iv) make available to ADAS without charge such facilities as ADAS reasonably requires to perform the Services;
  - (v) ensure that the Client's staff and agents co-operate with and assist ADAS; and
  - (vi) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.
- 4.2 If ADAS'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 (**Default**):

- (i) ADAS shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Default; and
- (ii) the Client shall reimburse ADAS on written demand for any costs or losses sustained or incurred by ADAS arising directly or indirectly from the Default.

- 4.3 The Client will be responsible for assessing the recommendations and advice given by ADAS and for any commercial decisions that it makes. The Client is responsible for taking into account the limitations in the instructions given to ADAS, and commercial and other factors, of which the Client and its other advisors are, or should be aware.
- 4.4 The Client will ensure that all legislative health and safety requirements are complied with in relation to employees or agents of ADAS working on the Client's premises, and that anti harassment measures are adhered to towards ADAS staff.
- 4.5 The Client will ensure that its employees attending ADAS' premises will comply with statutory and ADAS' health, safety, welfare, information technology and security arrangements.
- 4.6 Delivery, maintenance and insurance of materials and equipment provided by the Client shall be the responsibility of the Client. ADAS will be responsible for its own materials and equipment.
- 4.7 The Client will indemnify ADAS against claims brought or threatened by third parties (including all liabilities, losses, reasonable legal fees and internal management and administrative costs arising from such claims) as a result of or connected with the Services except for death or personal injury arising out of ADAS's negligence, for which ADAS's liability under any given claim will be limited to £2 million.

## 5. **Payment**

- 5.1 The fees payable by the Client to ADAS for the Services ("**Fees**") shall be as agreed in writing or, in default of such agreement, at ADAS' usual rates for such work from time to time in force. The Fees exclude:
- (i) all expenses properly incurred by ADAS in the discharge of the Services (including the cost of any materials and the cost of services reasonably and properly provided by third parties and required by ADAS), which shall be invoiced by ADAS and which the Client shall reimburse to ADAS; and
  - (ii) VAT, which ADAS shall add to its invoices at the appropriate rate.
- 5.2 Unless otherwise agreed in writing all sums due to ADAS are due within 30 days of invoice date. ADAS reserves the right unilaterally to vary payment terms by giving prior written notice.
- 5.3 ADAS reserves the right to increase quoted prices to cover events beyond its control e.g. rising fuel prices.
- 5.4 If any payment is not made to ADAS by the due date: (i) ADAS reserves the right to cease to provide the Services and, if it thinks fit, terminate the Contract; (ii) the Client agrees that payment for all Services carried out by ADAS up to that date shall become due and payable forthwith whether or not an invoice has been issued in respect of that work and notwithstanding that 30 days may not have expired since the invoice date; (iii) ADAS reserves the right to charge interest on any overdue payment under the Late Payment of Commercial Debts (Interest Act 1998) and iv) the client shall not circulate, publicise or copy any reports or other material delivered to it under this contract.
- 5.5 ADAS reserves the right to take up credit, bank and other references.
- 5.6 If two or more parties engage ADAS to supply Services in respect of the Contract then such parties shall be jointly and severally liable for payment for the Services.

## 6. **Use of ADAS' advice**

- 6.1 All information and advice provided by ADAS to the Client is for the sole use of the Client and may not be disclosed or made available by the Client to any third party without the prior written consent of ADAS.
- 6.2 ADAS' advice is based upon the business climate and circumstances prevailing at the time the advice is given. ADAS accepts no responsibility for any external factors, which may later change or fluctuate or of which ADAS cannot reasonably be expected to be aware.
- 6.3 The parties agree that ADAS' advice will only apply in the context of the instructions given by the Client to ADAS and any qualifications issued by ADAS in relation to such advice. ADAS will not accept liability for use by the Client in any other circumstances.
- 6.4 Any advice or recommendations given by ADAS as part of the Services will not be binding on ADAS unless confirmed by ADAS in writing.

## 7. **Limitation of liability**

- 7.1 Nothing in these Conditions shall limit or exclude ADAS' liability for:
- (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (ii) fraud or fraudulent misrepresentation; or
  - (iii) any other matter for which it would be illegal or unlawful for ADAS to limit or attempt to limit its liability
- 7.2 Subject to clause 7.1:

- (i) ADAS shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit whether direct or indirect, or any indirect or consequential loss arising under or in connection with the Contract; and
- (ii) ADAS' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to one-and-one-half times the total Fees paid by the Client to ADAS for the Services, up to a maximum of £100,000.

7.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

7.4 ADAS shall not be liable for any failure or delay in carrying out the Services attributable to (i) any Default of the Client, its employees or contractors; or (ii) any products supplied by a third party.

7.5 The Client shall bring any claim related to the Services within two years of (i) the relevant incident; or (ii) the date when the Client ought reasonably to have been aware of the existence of the claim. Subject to clause 7.1, ADAS excludes all liability for claims brought outside this time limit.

## 8. Termination

8.1 Without prejudice to their other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (i) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing of the breach;
- (ii) (a) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or (b) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or (c) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or (d) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or (e) the other party ceases, or threatens to cease, to trade; or (f) the other party takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt; or
- (iii) an Event of Force Majeure under clause 11.1 prevents or delays ADAS from carrying out the Services for 60 consecutive days or more.

8.2 Without limiting its other rights or remedies, ADAS may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.

8.3 Payment for all Services carried out up to and including the date of termination shall be due on termination by the Client pursuant to condition 8.1.

8.4 Payment due on termination by ADAS pursuant to condition 8.1 or 8.2 shall include:

- (i) payment for all Services carried out up to and including the date of termination; and
- (ii) reimbursement to ADAS of the cost of any commitments entered into by ADAS on the assumption that it would supply all the Services (including the cost of any commitments entered into with third parties in connection with the Services); and (b) the direct costs wholly and necessarily incurred by ADAS and resulting from such termination (unless such costs are attributable to ADAS' default or negligence)

8.5 Clauses which expressly or by implication have effect after termination shall continue in full force and effect (including, without limitation, clauses 5, 7, 8, 9, and 10). Termination or completion shall not prejudice the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination.

## 9. Confidentiality, Intellectual Property and Retention of Records

9.1 Subject to this clause 9 and to clause 3.4, each party shall treat as confidential all trade secrets and confidential information disclosed to it by the other party, and shall not disclose such information to a third party, or use such information for any purposes other than those envisaged by the Contract, without the prior written consent of the disclosing party, provided that ADAS may use information obtained while providing the Services for the compilation of statistics.

9.2 Neither party shall be prevented from disclosing information which: (i) is or becomes public knowledge; (ii) is or becomes known from other sources without restriction on disclosure; (iii) is required to be disclosed by law; or (iv) the recipient party can prove is or has been independently developed by the recipient.

- 9.3 The Client will neither display nor use either the name "ADAS", "RSK" or the ADAS or RSK logos nor will the Client disclose to any third party ADAS's involvement in the Services without the prior written consent of ADAS, unless legally required to do so.
- 9.4 All work produced by ADAS shall be the confidential information of ADAS and all copyright and intellectual property rights in general, in working papers, reports and other materials produced by ADAS, including those made on digital media or published on-line, shall vest in ADAS, but ADAS will grant a licence to the Client to use such reports internally and the Client may circulate copies of such within its own organisation (subject to Clause 5.4).
- 9.5 If any intellectual property is provided by the client to ADAS for the purposes of performing the services under the Contract, the client hereby agrees to grant a licence to ADAS for those purposes and for the making of any reports, papers or materials arising from the Contract which incorporate that intellectual property.
- 9.6 ADAS operates a standard record retention period for contract delivery information of six years post final invoice. By specific contract instructions this may be varied to meet client requirements. Secure retention beyond the standard period may attract an additional charge.
- 10. Non-Solicitation**
- 10.1 The Client shall not during the provision of the Services or within 6 months after the completion of the such without ADAS' prior written consent offer employment to any member of ADAS staff (of the level of consultant or higher) who has carried out work in connection with the Services or engage any such person either directly or indirectly to provide services to the Client.
- 10.2 If the Client is in breach of condition 10.1 the Client agrees to pay to ADAS, on demand, a sum equal to 30% of the total annual remuneration package paid by ADAS to the member of its staff concerned prior to his/her departure. The Client acknowledges that this sum represents a genuine and fair assessment of the likely loss to ADAS.
- 11. Miscellaneous**
- 11.1 ADAS shall have no liability to the Client under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of ADAS or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (**Event of Force Majeure**).
- 11.2 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.3 Any notice by either party shall be deemed to have been properly given if delivered by hand, or sent by first class recorded delivery post to the other party at its address notified in writing, and shall be deemed to have been delivered two working days after the date of posting.
- 11.4 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 11.5 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any condition of this Contract. This does not affect any right of a third party, which exists other than pursuant to that Act.
- 11.6 The contract to which these terms and conditions apply (any dispute or claim arising out of or in connection with it or its subject matter or formation, including non-contractual disputes or claims) shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.