



GENERAL CONDITIONS OF SERVICE

1. APPLICATION OF GENERAL CONDITIONS; DEFINITIONS

1.1 The definitions in this Article apply in these General Conditions:

“Pevco Kenya Security and Protection Services (PSPS)” (herein after referred to as the “the Company”) is a trading name operating under Pevco Kenya Ent, a company registered under the laws of Kenya.

“Client” the person, firm, company, partnership, association, trust, or government agency or authority that purchases Services from the Company and as identified in the applicable Company Order Form or agreed written instruction.

“Scope of Work” means the specification of the Services provided by Company to the Client under this Agreement, incorporated into this Agreement by reference, and attached hereto as Exhibit A. (Service proposal)

“Service Fee” means Company’s charges to the Client for the provision of the Services as set out in the Service proposal as well as charges for any additional services agreed between the parties. Such charges may be varied from time to time in accordance with the terms of this Agreement.

“Services” means the Services to be provided by Company under this Agreement, as specified in the Scope of Work.

“Site/s” means such premises at which the Services are to be performed, as specified in the Scope of Work.

“Losses” means losses as stipulated in applicable law including, but not limited to, any and all claims, losses, liabilities, damages, actions, demands or expenses (including, but not limited to, all reasonable attorneys fees or costs of suit which a party may incur as a result of or in connection with the provisions of the Services under this Agreement).

Agreement: the Company’s acceptance of a completed Company Order Form or other instructions for Services from the Client, or Company’s acceptance of an agreed quotation for Services, or any instruction or request for services by a Client and subsequent acceptance by the Company and performance of Services by the Company for the Client. These General Conditions govern each Agreement unless separate terms and conditions are agreed to in writing between the Client and the Company.

Party and Parties: individually the Company or the Client and collectively the Company and the Client.

Reports: all documents and products created by the Company or its agents, subcontractors, consultants and employees in relation to the performance of the Services.

1.2 For the avoidance of doubt, the Client’s standard terms and conditions (if any) attached to, enclosed with or referred to in any Company Order Form or other document shall not govern the Agreement.

1.3 The Company acts for the Client only. Except as provided in the Agreement, the Agreement is entered into solely between and may be enforced only by the Client and the Company. The Agreement shall not be deemed to create any rights in third parties, including without limitation suppliers or clients of a Party, or to create any obligation of a Party to such third parties.

2. COMPANY’S OBLIGATIONS

2.1 The Company shall, with reasonable care, skill and diligence as expected of a competent body experienced in the security and protection services and in performing services of a similar nature under similar circumstances, provide the Services, and deliver the Reports to the Client, in accordance with:

- 2.1.1 the specific requirements as set out in the Agreement;
- 2.1.2 such methods as the Company shall deem suitable on a case by case basis having regard to professional, industry standard, technical and/or government or regulatory grounds; and
- 2.1.3 any performance dates specified in the Agreement (such dates to be estimates only and time shall not be of the essence for performance of the Services).

2.2 The Company undertakes to provide full security service arrangements for 8 hourly duties for man guarding as stipulated in the service proposal agreement through its own guards and personnels.

2.3 “The Company shall ensure that all personnels deployed by it shall be efficient, skilled and honest.”The company shall provide Uniforms and identity cards to its personnels and also ensure their neatness and cleanliness.

The Company performs security and protection services as agreed by the parties, with independence, impartiality and objectivity. Such information is communicated to the Client in the form of the Reports/updates.

2.4 “The company shall produce forthwith documents in proof of statutory compliance

2.5 Company does not guarantee a function or result of the Services or accept overall responsibility for the Security at the Client’s Site/s. Unless otherwise agreed in the Scope of Work, Company is not engaged as a Security Consultant. Company makes no representation, express or implied, that its Services will prevent any loss or damage. However, Company is committed to perform its duties with due diligence

2.6 The Reports are given only in relation to the written instructions, documents, information and or access provided by the Client prior to the performance of the Services. The Company cannot be held liable for any error, omission or inaccuracy in

the Reports to the extent that the Company has been given erroneous or incomplete information or limited access by the Client. The Reports reflect the findings of the Company at the time and place of performance of the Services only. The Company shall have no obligation to update the Reports after issuance, except as otherwise stated in the Agreement.

2.7 Company shall have right to change personnel assigned for the Services at any time. The client may request changes in Company’s personnel, but company in its sole discretion will determine any action to be taken based upon such a request. Client requests to change personnel shall be made in writing stipulating the reasons for requesting the changes.

3. CLIENT’S OBLIGATIONS

3.1 The Client shall:

- 3.1.1 Co-operate with the Company in all matters relating to the Services;
- 3.1.2 “The Client shall make suitable arrangement for providing sitting place, water, light etc. for the personnels deployed by the company
- 3.1.3 The Client will be responsible for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, correcting or removing any actual or potentially hazardous conditions or materials from any of its premises before and during the supply of the Services at those premises. The Client shall adopt all necessary measures to ensure safety and security of working conditions on site during performance of the Services and inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client’s premises;
- 3.1.4 “The Client will have privity of contract only with “the company and will give instructions to it only and will have nothing to do or concerned with the conditions of employment of the personnels / employees and deployed by the company.
- 3.1.5 “The Client will not be entitled to retain any control, supervision or the manner of the discharge, dismissal or retrenchment of the personnels engaged and deployed by the company.
- 3.1.6 Provide the Company, either directly or through its suppliers and subcontractors, in a timely manner, such information as the Company may require for the proper performance of the Services and ensure that such information is accurate in all material respects;

3.1.7 It is clearly understood and agreed that by this Deed / Agreement no relationship of Employer or Employee is created between “the Client and the employees/personnels engaged and deployed by “the company. It will be the responsibility of “the company to pay wages to its personnels and to ensure compliance of all the Labour Laws applicable.

3.1.8 Take all necessary steps to eliminate or remedy any obstructions to or interruptions in the performance of the Services.

4. CHARGES AND PAYMENT

4.1 The Client shall pay each valid invoice submitted to it by the Company, in full and in cleared funds, every month before 10th of every month.

4.2 Service Fee Adjustment: Company shall be entitled to adjust the Service Fee during the term of this Agreement upon ten (10) days written notice to the Client in case Company’s costs for the provision of the Services increase due to (i) increased labour costs or costs related to cars or other equipment provided, (ii) changes in insurance premiums and/ or (iii) changes in legislation or regulations relating to the Services.

4.3 Service Tax: All sums payable under this Agreement are exclusive of Service Tax and other taxes or duties as applicable, which shall be payable in addition to the specified Service Fees

4.4 However, Company is committed to fund for the salary of the Security Personnel deployed at the site for the first Salary Circle on completion of performance of the preceding month. But from the next salary circle, Company will make payment to the deployed Security Personnel of the site only after getting its invoices remitted by the Client.

4.5 Suspension: In the event of payment delay, Company may suspend the performance of Services rendered under this Agreement, upon ten (10) days prior written notice. Suspension will not release the Client from any of its obligations under this Agreement,

4.6 If the Client fails to pay the Company on the due date, the Company may charge interest on such sum from the due date for payment at the monthly rate of 1.5%, accruing on a daily basis and being compounded monthly until payment is made, whether before or after any judgment; and suspend all Services until payment has been made in full. The fees and any additional charges are exclusive of all applicable taxes.

5. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

5.1 “Intellectual Property” shall mean all patents, rights to inventions, utility models, copyright and related rights, trade marks, logos, service marks, trade dress, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets), methods and protocols for Services, and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals, reversions or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

5.2 Each Party exclusively owns all rights to its Intellectual Property whether created before or after the commencement date of the Agreement and whether or not associated with any Agreement between the parties.

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- 5.3 Neither Party shall contest the validity of the other Party's Intellectual Property rights nor take any action that might impair the value nor goodwill associate with the Intellectual Property of the other Party or its affiliates.
- 5.4 Each Party shall take all necessary steps to ensure that it operates at all times in accordance with all applicable data protection laws and regulations.
- 5.5 The names, service marks, trademarks and copyrights of the Company and its affiliates shall not be used by the Client except solely to the extent that the Client obtains the prior written approval of the Company and then only in the manner prescribed by the Company.
- 5.6 For avoidance of doubt, nothing in the Reports or any other writing shall convey any rights of ownership or license whatsoever to the Company's intellectual property of its proprietary software, nor to the Company's proprietary audit methods, training materials and best practices manual, nor to the Company's protocols, nor to the Company's name, logo, marks, or other trade dress nor any other existing or later developed Intellectual Property rights or know-how developed and used to perform the Services and Reports. These shall remain the sole property of the Company. Further, the Reports do not convey ownership or licensing rights to any third party's Intellectual property that may be contained or referenced in the Reports.
- 6. CONFIDENTIALITY AND COMPANY'S PROPERTY**
- 6.1 "**Confidential Information**" shall mean any information disclosed in whatever form, by a Party to the other Party including, but not necessarily limited to, technical, environmental, commercial, legal and financial information relating directly or indirectly to the Parties and/or to the Agreement.
- 6.2 Each of the Parties shall not disclose or use for any purpose whatsoever any of the confidential knowledge or Confidential Information or any financial or trading information which it may acquire or receive within the scope of the performance of the Agreement, without the prior written consent of the Party that disclosed the Confidential Information.
- 6.3 The confidentiality undertaking shall not apply to any information:
- 6.3.1 which is publicly available or becomes publicly available through no act of the receiving Party;
- 6.3.2 which was in the possession of the receiving Party prior to its disclosure;
- 6.3.3 which is disclosed to the receiving Party by a third party who did not acquire the information under an obligation of confidentiality;
- 6.3.4 which is independently developed or acquired by the receiving Party without use of or reference to Confidential Information received from the disclosing Party;
- 6.3.5 which is disclosed in accordance with the requirements of law, any stock exchange regulation or any binding judgment, order or requirement of any court or other competent authority; or which is disclosed to an affiliate of the Party on a need to know basis.
- 6.4 Where reports are issued by the Company, they are intended for the exclusive use of the Client and shall not be published, used for advertising purposes, copied or replicated for distribution to any other person or entity or otherwise publicly disclosed without the prior written consent of the Company.
- 6.5 Each Party shall be responsible for ensuring that all persons to whom Confidential Information is disclosed under the Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized person or entity, and shall assume full responsibility for any breach of said undertaking.
- 6.6 On expiry or termination of the Agreement for any reason and at the direction of the other Party, each Party shall return or destroy the other Party's Confidential Information which is at that time in its possession or under its control, provided, however, that nothing herein shall prohibit the Company from maintaining copies of Reports in accordance with its record retention policies and document retention policies as may be required by law or accreditation bodies.
- 7. LIMITATION OF LIABILITY**
- 7.1 Company's liability for Client Losses and any other liability under this Agreement shall be limited as set out under in this Article. The Client agrees that the Service Fee reflects Company's assessment of the risks and exposures based on information provided by the Client and that the Agreement and the Scope of Work is conditioned upon the fact that Company's liability in this Agreement is limited as provided herein.
- 7.2 To the extent that the Company renders Services, the Client agrees that the Company does not owe any specific success but only such Services. The Client is responsible for exercising its own, independent judgment with regard to the information and recommendations provided by the Company. Neither the Company nor any of its agents warrant the quality, outcome, effectiveness or appropriateness of any decision or action undertaken on the basis of the Reports provided under the Agreement.
- 7.3 If the Company's performance of its obligations under the Agreement is prevented or delayed by any act, omission, default or negligence of the Client, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay
- 7.4 Company will be responsible for damages or loss arising directly from the negligence or wilful act of its personnel within the defined responsibilities assigned to them subject to force majeure, timely payments of invoices and the report of a joint committee represented equally. In case of any theft or negligence the Client will inform the company of the incident within the shortest possible time and provide a copy of the FIR filed and any other document which is required by the company to realize the insurance claim.
- 7.5 Maximum Liability: Notwithstanding anything to the contrary in this Agreement the liability of Company shall be restricted upto a maximum amount equivalent to the Service Margins of one month.
- 7.6 The Client shall notify Company of any claim arising from the Services in reasonable detail and in writing within ten (10) days on which the Client became aware (or should reasonably have become aware) of the occurrence giving rise to the claim, provided, however, that if the Client does not provide such notice to Company within thirty (30) days from the occurrence, Company shall have no obligation to pay any compensation whatsoever relating to such claim
- 7.7 Without prejudice to Article 7.1, the total liability of the Company and its affiliates, and their respective employees, agents, consultants, and subcontractors, in contract, tort (including, but not limited to, negligence, gross negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in any manner in connection with or related to the Services, the performance, or contemplated performance, of the Agreement shall be limited to the greater of:
- 7.7.1 A sum equivalent to three (3) times the amount of fees paid or payable by the Client to the Company in respect of the Services that give rise to the Company's liability to the Client as per Article 7.5; or
- 7.7.2 As limited by the insurance policy.
- 7.8 Without prejudice to Articles 7.1 and 7.7, the Company shall not be liable to the Client for and the Client shall be precluded from bringing any claim for losses, unless notice of such claim is received by the Company before thirty (30) days after the earlier of (i) the date of performance by the Company of the Services which give rise to the claim, or (ii) the date when the Services should have been completed in the event of any alleged non-performance.
- 8. Validity of the Contract**
- 8.1 This Contract is valid for one (1) year from the date of commencement or as per the service proposal and will be automatically renewable for equal periods on mutually agreed revised terms unless either party terminates the same by giving one month's notice in writing before the end of the Contract period or payment in lieu of the notice period. However, either party may terminate this contract without any cause or penalty for convenience by giving prior notice in writing of one month to the other party
- 8.2 Either party may terminate this Agreement for good cause upon ten (10) days' prior notice to the other party. Good Cause for Company will include, without limitation: (a) any material or persistent minor breach by Client of its obligations under this Agreement, (b) cancellation of or a material change to any of Company's insurance coverage relevant to this Agreement, (c) a change in applicable laws or regulations that has a material effect on, or causes a material change to the obligations of Company under this Agreement, (d) if the Client becomes insolvent, an application for insolvency procedure or similar has been submitted by or against the Company, or (e) any act, omission or conduct of the Client, which in Company's reasonable opinion, rings or may bring Company's business or reputation into disrepute.
- 8.3 In case of termination of the contract between the Client and the Company, for any reasons whatsoever, or without any reasons for convenience, it shall be the obligation of the Client to settle the dues of the Company in full before the actual withdrawal of service. Any delay in remitting the full and final payment will result in the Company continuing to occupy the site and billing the Client for the period on full rates but with no obligations. If termination of this Agreement is due to Client's material breach of this Agreement, the Client shall reimburse Company for any loss incurred due to such breach.
- 8.4 Upon termination of this Agreement, Company shall be discharged from all further performance under this Agreement and shall be entitled to enter the site/s and recover any equipment, materials, software and/or documents (including but not limited to retrieval and/or destruction of electronic documents and data) belonging to Company.
- 9. FORCE MAJEURE**
- 9.1 For the purposes of this Article 8, "**Force Majeure**" shall mean an event, the occurrence of which is beyond the reasonable control of the claiming Party, and which renders either the Client or the Company unable, wholly or in part to carry out its obligations under the Agreement (other than the obligation to make payments of sums due to the other Party), which inability could not have been prevented or overcome by the claiming Party exercising reasonable foresight, planning and implementation.
- 9.2 Neither Party shall be liable for any loss or damage resulting from any delay or failure in performance of its obligations hereunder resulting directly or indirectly from an act of Force Majeure. If the disability continues for more than fifteen (15) days, then the non-disabled Party will have the right to terminate this Agreement without incurring any liability whatsoever.
- 10. SUBCONTRACTING**
- 10.1 The Company at its sole discretion may delegate the performance of all or a portion of the Services under the Agreement to an affiliate, agent or subcontractor of the Company without prior notice to the Client, and the Client hereby consents to such delegation.
- 11. GOVERNING LAW AND JURISDICTION**
- 11.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of [Kenya], notwithstanding any conflicts of laws rules that could require the application of any other laws.
- 11.2 The parties irrevocably agree that the courts of [Kenya] shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter.

INITIALS:

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