

# Policies

[Home](#) > [About ELEVATE](#) > [Sustainability](#) > [Terms & Conditions](#)

## Terms & Conditions

### GENERAL

1.1. Unless otherwise agreed in writing or except where they are at variance with (i) the regulations governing services performed on behalf of governments, government bodies or other public entities or (ii) the mandatory provisions of local law, all offers or services and all resulting contractual relationship(s) between any of the affiliated companies of ELEVATE Hong Kong Holdings Limited or any of their agents (hereinafter the “Company” or “ELEVATE”), and the entity for which services are provided (hereinafter the “Client”) shall be governed by these general conditions of service (hereinafter the “General Conditions”).

1.2. The Company and Client (hereinafter “Party(ies)”) acknowledge that the terms of these General Conditions are personal and that neither Party shall assign all or any part of the benefit of these terms without prior written consent of the other Party.

### PROVISION OF SERVICES

2.1 The Company will provide services using reasonable care and skill and in accordance with Client’s specific instructions as confirmed by the company or, in the absence of such instructions:

2.1.1. The terms of any Statement of Work (SOW), proposal or specification sheet of the Company; and/or

2.1.2. Any relevant trade custom, usage or practice; and/or

2.1.3. Such methods as the Company shall consider appropriate on technical, operational and/or financial grounds.

2.2 Information stated in any deliverable, report, or findings document (collectively, hereinafter “Report”) is derived from the results of assessment procedures carried out in accordance with the instructions of the Client, and/or the Company’s assessment of such results on the basis of any technical standards, trade practice, or other circumstances which in the Company’s professional opinion be taken into account.

instructions, within the limits of the alternative parameters as provided for in clause 2.1. The Company is under no obligation to refer to, or report on, any facts or circumstances which are outside the specific instructions received or alternative parameters applied.

2.4 The Company may delegate the performance of all or part of the services to an agent or subcontractor and Client authorizes Company to disclose all information necessary for such performance to the agent or subcontractor. If the Company does delegate the performance of any services, the Company assures that all agents or subcontractors possess the requisite level of skill and experience necessary.

2.5 Should Company receive documents reflecting engagements contracted between Client and third parties or third party documents, the documents are considered to be for information only, and do not extend or restrict the scope of the services or the obligations accepted by the Company.

2.6 Client acknowledges that the Company neither takes the place of Client or any third party, nor releases them from any of their obligations, nor otherwise assumes, abridges, abrogates or undertakes to discharge any duty of Client to any third party or that of any third party to Client.

## OBLIGATIONS OF CLIENT

The Client will:

- 3.1. ensure that sufficient information, instructions and documents are given in due time to enable the required services to be performed; and
- 3.2. notify the Company in writing of any change(s) in its operations that could adversely affect the information gathered or stated in the Reports.
- 3.3. Ensure that any information and data transferred and provided by the Client to ELEVATE for the delivery of the Service will be transferred with all necessary approvals as required under local legislation, and has obtained any waivers from individuals if personal data is transferred as part of delivery of the Service.

## FEES AND PAYMENT

- 4.1. Fees not established between the Parties at the time the request for service or a contract or SOW is negotiated shall be at the Company's standard rates (which are subject to adjustment) and all applicable taxes shall be payable by the Client.
- 4.2. Unless a shorter period is established in the invoice or Proposal or SOW, Client will promptly pay not later than 30 days from the relevant invoice date or within such other period as may be

4.3. Client shall not be entitled to retain or defer payment of any sums due to the Company on account of any dispute, counter claim or set off which it may allege against the Company.

4.4. In the event of any unforeseen problems or expenses that arise in the course of carrying out the services, the Company shall endeavor to inform the Client and shall be entitled to charge additional fees to cover extra time and costs necessarily incurred to complete the services.

4.5. If the Company is unable to perform all or part of the services for any cause whatsoever outside the Company's control including failure by Client to comply with its obligations provided for in clause 3, the Company shall nonetheless be entitled to payment of:

4.5.1. The amount of all non-refundable expenses incurred by the Company; and

4.5.2. A proportion of the agreed fee equal to the proportion of the services actually carried out.

## GRANT OF LICENSE

5.1. Use of the Company's corporate name or registered marks for advertising purposes is not permitted without the Company's prior written authorization.

5.2. Use of the Client's corporate name or registered marks for advertising purposes is not permitted without the Company's prior written authorization.

## SUSPENSION, WITHDRAWAL OR TERMINATION OF SERVICES

6.1. The Company shall be entitled to immediately and without liability suspend, withdraw, or terminate provision of the services in the event of:

6.1.1. failure by the Client to comply with any of its obligations hereunder and such failure is not remedied within 10 days that notice of such failure has been provided to Client; or

6.1.2. any suspension of payment, arrangement with creditors, bankruptcy, insolvency, receivership or cessation of business by Client.

6.2. Either party shall be entitled terminate, withdraw or suspend provision of services in the event of:

6.2.1. a breach of obligations hereunder and failure to remedy the breach within thirty (30) days of receipt of written notice;

6.2.2. convenience and without cause, upon thirty (30) days written notice.

## LIABILITY AND INDEMNIFICATION

The Parties each agree to indemnify, defend and hold the other Party, its affiliates, shareholders, directors, officers, employees, agents, successors, and assigns, harmless against and to reimburse

Neither party shall be liable to the other, under any circumstances, for any indirect, special, punitive or consequential damages, including any lost profits or diminution in value.

Notwithstanding anything to the contrary contained herein, the total cumulative liabilities of each Party and all of its respective shareholders, directors, officers, employees and agents to the other Party arising from services under these General Conditions shall not exceed five times the fees or \$50,000 whichever is lower.

If either Party commences an action against the other Party arising out of these General Conditions, or in the event of a voluntary arbitration proceeding between the Parties relating to these terms, the prevailing Party shall be entitled to have and recover from the losing Party reasonable attorneys' fees, costs of suit, investigation costs, discovery costs and expert witness fees and costs, including costs for appeal. The indemnification obligation shall include obligation to pay the indemnitee's reasonable attorneys' fees, costs and disbursements, whether the indemnitee be the plaintiff or defendant.

The indemnity obligations established under these General Conditions will survive the expiration of terms for a period two (2) years.

## INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION

8.1. All IP Rights belonging to a party prior to entry into this Agreement shall remain vested in that party. Nothing in this Agreement is intended to transfer any IP Rights from either party to the other.

8.2. Any use by the Client and affiliated companies or subsidiaries of the name "ELEVATE" or any of ELEVATE's trademarks is strictly forbidden without prior approval.

8.3. All IP Rights in any Reports, document, graphs, charts, photographs or any other material (in whatever medium) produced by ELEVATE pursuant to this Agreement shall belong to ELEVATE. The Client shall have the right to use any such Reports, document, graphs, charts, photographs or other material for the purposes of this Agreement.

8.4. The Client agrees and acknowledges that ELEVATE retains any and all proprietary rights in concepts, ideas and inventions that may arise during the preparation or provision of any Report (including any deliverables provided by ELEVATE to the Client) and the provision of the Services to the Client. Additionally, the Client grants ELEVATE the rights to use the Confidential Information data in aggregate form such that this data is used to understand and analyze trends in the industry so long as no use of the Confidential Information or reports, in the aggregate, for this purpose shall allow the identification of the Client or a third party subject to the Services or disclosure of particular Client-identifiable Confidential Information

connection with this Agreement, it shall take all necessary technical and organizational measures to ensure the security of such data (and to guard against unauthorized or unlawful processing, accidental loss, destruction or damage to such data).

## CONFIDENTIALITY

9.1. “Confidential Information” shall mean any and all of the following:

9.1.1 Any information in which either Party asserts in writing, prior to, or concurrent with, services delivered to Client by the Company, a proprietary and/or confidential interest;

9.1.2 All of the following information of either Party: technical knowhow, including, but not limited to, methods; technical data; business strategies; information about new products, services or processes; business, technical or marketing analysis; compilations; calculations; algorithms; concepts; technical procedures; formulas; specifications; inventions; research projects; customer lists and customer contacts; pricing policies; operational methods; financial information; marketing information; research and development capabilities; trade secrets;

9.1.3 Any information of a confidential nature concerning either Party’s employees; or

9.1.4 Any information either Party has received from others that it is obliged to treat as proprietary and/or confidential.

9.2. Confidential Information shall be considered confidential whether it is disclosed orally or in writing, learned through observation or examination of any documents, books, records, data or products, or in the licensing or demonstration of any of the methods or through observation or examination of facilities, plant and machinery, processes or procedures, developed through research and evaluation.

9.3. Both Parties agree that the Confidential Information of each respective Party shall be retained by both Parties in strict confidence and shall not be used by either Party or any related company or affiliate for any purpose other than the discussion, negotiation and performance of agreed upon services. Neither Party shall disclose the Confidential Information of the other Party to any third party for any reason, except as required by law.

9.4. Each Party shall take all reasonable security precautions to protect any such Confidential Information from disclosure as may be necessary under the circumstances, including, without limitation, the use of secure storage, locks, security codes, passwords and other methods to protect documents, computer systems and other records from unauthorized access, theft, unauthorized duplication or distribution or discovery of contents and to prevent access to or observation of the practicing or demonstration of methods by unauthorized persons.

9.5. Provided, however, that notwithstanding, anything to the contrary in this Agreement, Company reserves the right to utilize any reports and Confidential Information for the Services and otherwise

the industry for the express and limited purpose of establishing the best practices for audits, inspections and testing in the industry, so long as no use of the Confidential Information or reports, in the aggregate, for this purpose shall allow the identification of Client or a third party subject to the Services or disclosure of particular Client-identifiable Confidential Information.

9.6. These obligations of confidentiality shall remain in effect with respect to all Confidential Information that does not lose its character as confidential until the longer of: (a) ten (10) years after the termination or expiration terms herein, or such shorter period as agreed by the Parties; or (b) ten (10) years after the termination or expiration of any terms between the Parties, as applicable.

9.7. In the event of any breach, violation or evasion of these obligations of confidentiality by one Party, the other Party shall be entitled to immediate injunctive relief without prejudice to such other legal or equitable rights and remedies to which it may be entitled.

9.8. In addition to the above, all information, data and related materials shall also be subject to any Non-Disclosure Agreement or similar agreement (“Nondisclosure Agreement”) entered into between the parties. Provided, however, that in the event of any conflict between any provision of such a Nondisclosure Agreement and this Agreement, the provisions of this Agreement shall control.

9.9. The obligations of confidentiality set forth in these terms shall be binding upon both Parties, and their respective successors, assigns, officers, agents, employees and legal representatives, and shall inure to the benefit of the successors and assigns of either Party.

## DATA PROTECTION

10.1 The Company shall observe all statutory provisions with regard to data protection. To the extent that the Company processes or gets access to personal data in connection with the Services or otherwise in connection with this Agreement, it shall take all necessary technical and organisational measures to ensure the security of such data (and to guard against unauthorised or unlawful processing, accidental loss, destruction or damage to such data). Such technical and organisational measures shall be no less onerous than those that are customary and usually applied in the business practice and business area in which the Company is active.

## FORCE MAJEURE

Neither party shall be liable to the other for any delay in performing or failure to perform any obligation under this Agreement to the extent that such delay or failure to perform is a result of:

a. war (whether declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage and/or piracy;

c. strikes and labour disputes, other than by any one or more employees of the affected party or of any supplier or agent of the affected party; or

d. failures of utilities companies such as providers of telecommunication, internet, gas or electricity services; or

e. pandemics or epidemics.

11.2 For the avoidance of doubt, where the affected party is ELEVATE any failure or delay caused by failure or delay on the part of a contractor or subcontractor shall only be a Force Majeure Event (as defined below) where the contractor or subcontractor is affected by one of the events described above.

11.3 A party whose performance is affected by an event described in Clause 11.1 (a Force Majeure Event) shall:

11.3.1 promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of its obligations;

11.3.2 use all reasonable endeavours to avoid or mitigate the effect of the Force Majeure Event and continue to perform or resume performance of its affected obligations as soon as reasonably possible; and

11.3.3 continue to provide Services that remain unaffected by the Force Majeure Event.

## MISCELLANEOUS

12.1. These General Conditions constitute the sole and entire agreement between the Company and Client and no warranties, representations, guarantees or other terms or conditions not contained and recorded herein shall be of any force or effect.

12.2. Nothing in these General Conditions shall constitute or be taken to constitute either Party as the agent, partner, joint venture or employee of the other for any purposes whatsoever and neither Party shall hold out any other Party as his agent, partner, joint venture or employee. To the extent permitted by law, any act or omission of either Party shall not bind or obligate the other Party.

12.3. If any one or more provisions of these General Conditions are found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or thereby impaired.

12.4. No variation, modification or waiver of any provision of these General Conditions nor consent to any departure by any part thereof shall in any event be of any force or effect unless confirmed in writing.

12.6. Company represents and warrants that it is operating in accordance with all legal requirements of the country(ies) and region(s) in which it operates and has all necessary licenses, permits and/or regulatory approvals in order to perform the services it contracts to perform.

12.7. Neither Party shall be liable in damages or have the right to terminate the terms of these General Conditions for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the Party whose performance is affected.

12.8. Each Party warrants to having full power and authority to enter into and perform obligations under these General Conditions.

12.9. A notice, approval, consent or other communication pursuant to these General Conditions shall be in writing by a courier service that provides tracking and evidence of delivery; or certified mail (return receipt requested); or electronic mail, provided that receipt is confirmed by the receiving Party.

12.10. All proprietary ELEVATE content or data licensed or made available to the Client belongs to ELEVATE. ELEVATE owns all Intellectual Property Rights (including copyright and database rights) in such content and any selection or arrangement of such content. Nothing in this Agreement shall be construed as granting to Client any right, title or interest in or to any patent, trademark, copyright or other right of ELEVATE.

12.11. Where the Client has subscribed to / licensed proprietary ELEVATE content or data it may not incorporate any such content into any materials developed for external use without the written permission of ELEVATE. The Client shall hold proprietary ELEVATE content or data in strictest confidence and shall not copy, disclose, reverse engineer or attempt to derive the composition or underlying information, structure or ideas of ELEVATE. The Client agrees that all proprietary ELEVATE content and data and the information contained therein are confidential information of ELEVATE.

12.12. ELEVATE reserves the right, at its sole discretion, to change, add or remove portions of these General Conditions, at any time. Such notification will be made via this website and it is the Client's responsibility to review the amended General Conditions. Client's continued use of the services following the posting of changes will mean that the Client accepts and agrees to the changes and agrees that all subsequent transactions by the Client will be subject to the General Conditions.

## GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION



13.2 All proceedings shall take place in the courts of Hong Kong, which should have exclusive jurisdiction to hear and determine any suit, action or proceedings and to settle any claim, dispute or difference, which may arise out of or in connection with this agreement and, for such purposes, irrevocably submit to the jurisdiction of such courts.

13.3 All proceedings shall be conducted in English.

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