

# Terms of Service

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## 1. Document and Agreement Terms

- 1.1. Any and all documents which require a signature may be treated as an **Agreement** between the **Customer** and **Hengman Solutions** and shall be effective and commence upon receipt of payment. **Hengman Solutions** shall provide an invoice to receive payment and **Customer** shall promptly release said payment to Hengman Solutions for **Service(s)** to commence. The acceptance or acknowledgement of said **Documents** may be transmitted electronically and must be signed (electronically or in writing) by a duly authorized representative of both **Parties** to be enforceable. Neither **Party** shall contest the enforceability of the **Agreement** transmitted and signed.
- 1.2. If any or either **Party** is unable to reach an agreement, all **Documents** shall be treated as null and void. Any disagreements shall be voiced prior to signing of final **Document** (invoice) before any payment is made. Any changes or disagreements after payment may be discussed further and drafted upon on a separate **Document**, subject to the discretion of **Hengman Solutions**.
- 1.3. The **Agreement** is not concluded and shall not bind **Hengman Solutions** if the **Customer's Documents**, including any of these **Terms**, in any respect, differs from the **Documents** issued by **Hengman Solutions** to the **Customer**.
- 1.4. For any quotations issued by **Hengman Solutions** will be effective for up to 10 (ten) working days. Upon passing this period, the prices stated on said quotation may be subject to change, at the discretion of **Hengman Solutions**.
- 1.5. The applicability of the purchase and other terms and conditions of the **Customer** are expressly refuted by **Hengman Solutions** and the terms and conditions of the **Customer** do not apply to the **Agreement** (not even additionally), unless such terms and conditions have been explicitly accepted by **Hengman Solutions** in writing, in which case a reference to such terms and conditions will be incorporated in the main body of all **Documents** by **Hengman Solutions**. Unless provided otherwise in the **Documents**, these **Terms** shall prevail should there be any conflict or inconsistency between the provisions of the terms and conditions of the **Customer** and these **Terms**.
- 1.6. These **Terms** may not be modified or eliminated, unless such modified or eliminated provisions have been explicitly accepted by **Hengman Solutions** in writing signed by a duly authorized representative of both parties, in which case specific provisions to that effect will be incorporated in the main body of applicable **Documents** by **Hengman Solutions**, referring to the provisions of these **Terms** to be modified or eliminated and shall then apply exclusively for this **Agreement** for which they have agreed and signed to.

## 2. Payment & Invoicing

- 2.1. The **Customer** shall in consideration of **Service(s)** pay to **Hengman Solutions** the fees, the expenses and all applicable taxes stated in the **Documents**.

- 2.2. Unless otherwise stated in the **Documents**, the **Agreement** shall not be construed as to perform the **Agreement** at a fixed price.
- 2.3. The **Customer** shall pay each invoice within 5 (five) working days in order for **Service(s)** to commence. **Hengman Solutions** shall not be held liable for any late delivery or errors caused by late payments.
- 2.4. The **Parties** agree that payments may be affected by electronic transfer of funds or as otherwise agreed upon in the **Documents**. **Hengman Solutions'** banking details are set out on its invoices. Electronic invoicing or PDF invoices are acceptable.
- 2.5. The **Customer** will be responsible for arranging foreign exchange clearance and for meeting all related costs in the Jurisdiction to which the funds are being remitted.
- 2.6. Should any dispute arise relating to any invoice, the **Customer** must notify **Hengman Solutions** of the disputed amount and the reason for dispute in writing within 3 (three) working days of the date of the disputed invoice, failing which the **Customer** shall be deemed to have accepted the invoice as due and payable. In the event the **Customer** withholds payment of the disputed invoice, **Hengman Solutions** shall be entitled to suspend all **Service(s)** until the dispute is solved. Notwithstanding any of the foregoing, the **Customer** shall be liable to pay and clear any undisputed parts of the invoice.
- 2.7. If any invoice is not paid on the due date, **Hengman Solutions** shall have the right to charge, and the **Customer** shall pay interest to the amount, calculated from the due date of the invoice to the receipt of the full amount paid at a rate of 2% (two per cent) per month.
- 2.8. In the event the **Customer** fails to pay any invoice when due, **Hengman Solutions** may, without having to obtain a court order and without having to pay any damages or penalties: (a) suspend the performances of its obligations under the **Agreements**; or (b) terminate the agreement by issuing 5 (five) days written notice. As a consequence of termination, all payment owed to **Hengman Solutions** shall become immediately due and payable.

### **3. Execution of the Agreement**

- 3.1. **Hengman Solutions** shall carry out the **Service(s)** and provide the **Product(s)** as specified in the **Documents**.
- 3.2. **Hengman Solutions** will carry out the **Service(s)** with due professional skill and care, in accordance with the Agreement (including, if any, the services levels set forth the **Agreement**), and otherwise all Standards of Practice.
- 3.3. In the performance of the **Service(s)**, **Hengman Solutions** will apply professional personnel, who are, in the reasonable opinion of **Hengman Solutions**, properly qualified, trained, competent, skilled and experienced.
- 3.4. **Hengman Solutions** has the right to determine the means, manner and methods by which the **Service(s)** will be performed, with due regard and observance of (a) the terms and conditions contained in the **Agreement**; and (b) where possible, the needs and wishes of the **Customer**.
- 3.5. **Hengman Solutions** shall use reasonable efforts to carry out the **Service(s)** and provide the Deliverables on such milestones and dates as set forth in the Letter; however, these milestones and dates shall not be deemed to be fixed deadlines unless agreed otherwise in the Letter. In case of suspension of the **Service(s)** or a Force Majeure Event, all milestones and dates shall be automatically extended by a period of time equal to the period of suspension or Force Majeure Event.

- 3.6. The **Customer** agrees that **Hengman Solutions'** employees may be unavailable for short periods of time for reasons, including but not limited to, annual leave, internal meetings and training, and the **Hengman Solutions** shall for these short periods take reasonable steps to minimise any disruption to the **Service(s)**. **Hengman Solutions** may, subject to prior notification to the **Customer**, replace employees with other employees of equivalent qualifications, competences, skills and experience.
- 3.7. All warranties, conditions and other terms implied by state or common law (including, but not limited to, any implied warranties of merchantability and fitness for the purpose) are, to the fullest extent permitted by applicable law excluded from the Agreement.
- 3.8. No performance, **Product(s)**, **Service(s)**, information or advice provided by **Hengman Solutions** or its employees or Subcontractors will create a warranty or otherwise increase the scope of any warranty provided in terms of the Agreement.

## 4. Confidentiality

- 4.1. Where a **Party** (the Receiving Party) obtains **Confidential Information** of the other **Party** (the Disclosing Party) in connection to the **Agreement** it shall: (a) keep that **Confidential Information** confidential, by applying the same level of care that is used to care for its own **Confidential Information** and in no case shall the degree of care be less than a reasonable degree of care; (b) use that **Confidential Information** only for the purposes of performing obligations under the **Agreement**; and (c) not disclose or divulge that **Confidential Information** to any third party without the prior written consent of the Disclosing Party.
- 4.2. If the Receiving Party becomes aware of any unauthorized disclosure of **Confidential Information**, it shall immediately inform Disclosing Party and the **Parties** shall seek to find a remedy to the situation and prevent its further unauthorized use.
- 4.3. All **Confidential Information** is and shall remain the property of Disclosing Party; provided however that **Hengman Solutions** shall have irrevocable, perpetual, non-exclusive right to use and reproduce in any **Product(s)** or **Service(s)** on behalf of the **Customer**, subject always to Article 3.1.
- 4.4. Within 30 (thirty) days from the date of termination or expiration of the **Agreement**, the Receiving Party shall cease to use the **Confidential Information** and shall promptly return or destroy all **Confidential Information**, together with any copies or extracts thereof, as so requested by the Disclosing Party.
- 4.5. With respect to archival storage, the **Customer** agrees that **Hengman Solutions** may retain the **Customer's Confidential Information** in its archive for the period required by its quality and assurance processes or by applicable law.

## 5. Intellectual Property Rights

- 5.1. For the purpose of this Article, **Customer's IPR** means any and all **Intellectual Property Rights** of **Hengman Solutions** in any tools, methodologies, services, documents and techniques of any nature whatsoever, which have been created or acquired by **Hengman Solutions** before or otherwise than in the performance of the **Agreement** and which used by **Hengman Solutions** in connection with or to perform the **Service(s)** or otherwise necessary for the exploitation of the **Service(s)**, as well as all **Intellectual Property Rights** in and to all (new) documents, tools, methodologies, services and techniques of any nature whatsoever which are generated by or for **Hengman Solutions** in the performance of the

**Agreement.** The **Customer** will execute such documents and/or take such steps as may be reasonably necessary to vest **Hengman Solutions' IPR** in **Hengman Solutions** or its nominee.

- 5.2. For the purpose of this Article **Customer's IPR** means all **Intellectual Property Rights** of the **Customer** whether provided directly or indirectly by the **Customer** to **Hengman Solutions** for the purpose of this **Agreement**.
- 5.3. The **Customer** acknowledges that all **Hengman Solutions' IPR** and any developments, modifications, or enhancements to the **Customer's IPR** are and will at all times remain vested to **Hengman Solutions**.
- 5.4. **Hengman Solutions** hereby grants to the **Customer**, upon full and final payment by the **Customer** of all amounts owing to **Hengman Solutions**, a royalty-free, world-wide, non-exclusive, non-transferable right to use **Hengman Solutions' IPR** in and to the **Service(s)**, the **Product(s)** or output purpose of pertaining the contents of the **Documents ONLY** and conditionally upon compliance with the **Terms**. The **Customer** shall not alter, deface or remove any references to **Hengman Solutions** as being the rightful owner of **Hengman Solutions' IPR**.
- 5.5. **Hengman Solutions** warrants, exclusively to the **Customer**, that the **Product(s)** produced in relation to the **Service(s)** will be the original work of **Hengman Solutions**, its employees or subcontractors, unless a **Product(s)** indicates otherwise, and that the **Product(s)** to the best of **Hengman Solutions' knowledge** will not infringe or misappropriate the **Intellectual Property Rights** of any third **Party**.
- 5.6. Neither **Party** will use or reference any trade names or trademarks of or used by the other **Party** or any of its **Affiliates** except as authorized by the other party.

## 6. Defects

- 6.1. A defect shall be deemed to exist in relation to the **Service(s)** or the **Product(s)** are not in material conformity with Article 3.2.
- 6.2. Upon completion of the **Service(s)** or delivery of **Product(s)**, the **Customer** shall evaluate the **Service(s)** and **Product(s)**, and will report any defects to **Hengman Solutions** within 10 (ten) working days of completion of the **Service(s)** or delivery of the **Product(s)**.

## 7. Dispute Resolution Venue, Applicable Law & (extra)

### Judicial Costs

- 7.1. The **Parties** shall endeavor to settle amicably any conflicts arising from or relating to the **Agreement**. In case with regards to such conflicts, no amicable settlement is reached, all disputes which may arise between **Hengman Solutions** and the **Customer** shall be settle by the competent court in the **Jurisdiction**.
- 7.2. The **Agreement** between the **Customer** and **Hengman Solutions** will be exclusively governed by and construed in accordance to the law in the **Jurisdiction**.

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End of Document

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