

Standard Terms and Conditions



- 1.0** These Standard Terms and Conditions apply to Contracts entered into between Clients and DIAB (DI-Asia Base Business Services Ltd).
- 2.0 Project definition**
- 2.1 The Proposal**
- 2.1.1 DIAB normally begins every project with drafting a thorough project proposal detailing scope and quantity of work, methodologies, Project team, timeline, and other relevant issues (hereinafter referred to as the Proposal). The total scope of activities outlined in the Proposal is normally referred to as "the Project".
- 2.2 The Contract**
- 2.2.1 The Contract between DIAB and a Client is comprised of the Proposal; these Standard Terms and Conditions; plus either: (a) a statement in writing by the Client where he, in clear terms, expresses his acceptance of the Project; or (b) a signed project acceptance form or contract form (provided by either DIAB or the Client).
- 2.3 Changes to the scope of work**
- 2.3.1 Change orders are variations in the Project scope that either significantly increase or decrease the tasks, efforts or risks assigned to DIAB.
- 2.3.2 Either DIAB or the Client can request change orders. Requests for changes must be clear and detailed in order for the other party to reasonably be able to assess the impact of the requested changes on costs, deadlines or any other aspect of the Project.
- 2.3.3 For change orders to be made effective, they shall be approved by both DIAB and the Client. Such approval shall, as a minimum, comprise: (a) a written request for the change by the requesting party; and (b) a written acknowledgment that the change has been accepted by the other party.
- 2.3.4 Additional tasks assigned to DIAB directly by the Client that consist of less than eight hours of billable time do not need to be documented in this manner and can be directly carried out by DIAB without a formal request or approval of a change order.
- 2.4 Changes to deadlines**
- 2.4.1 Where specific deadlines are set out in the Proposal, reasonable efforts will be made to carry out the Project in accordance with these deadlines. The deadlines, however, are intended for planning purposes only and are subject to change when required and reasonable. In case it is necessary, for whatever reason, to make changes to the Project time schedule, the Client will be given reasonable notice of such changes.
- 2.5 Changes to the Project Team**
- 2.5.1 DIAB will use all reasonable efforts to ensure that the selected Project team members are available to perform the Project. In case it is necessary, for whatever reason, to make changes to the Project team, the Client will be given reasonable notice.
- 3.0 Contract terms**
- 3.1 Term of the Contract**
- 3.1.1 The term of the Contract shall commence on the date a Contract has been concluded between DIAB and the Client. Unless terminated under the provisions of the Contract, the Project shall continue until it is finished.
- 3.2 Alteration or Termination of the Contract**
- 3.2.1 Alterations of the Contract should be the result of friendly negotiations and are valid upon the signature of both parties.
- 3.2.2 Either party may terminate the Contract in writing with immediate effect in case the other party commits a material breach of the Contract.
- 3.2.3 Regardless of the reason for termination of the Contract, Consulting Fees shall be invoiced for work carried out up till the moment of termination.
- 3.3 Assignment of the Contract**
- 3.3.1 The Client and DIAB accept all relevant legal rights and obligations related to the Contract. These legal rights and obligations can be transferred to another organization at a later time upon the signed agreement of both parties.
- 3.4 Force Majeure**
- 3.4.1 A force majeure shall be considered any occurrence outside the realm of control of DIAB or the Client that limits the ability of DIAB or the Client to comply with the terms of the Contract, including but not limited to natural disasters, political unrest, death of a manager, etc.
- 3.4.2 Failure by DIAB or the Client to comply with the terms of this Contract as a result of a force majeure shall not constitute a breach of Contract.
- 3.4.3 Upon the occurrence of a force majeure, either party may call for a re-negotiation of this Contract.
- 3.4.4 If the force majeure results in the total halt of the Project, payment for the work carried out in the time before the force majeure occurs shall be calculated according to actual work performed up until the day the force majeure situation occurred or began.
- 3.4.5 If the force majeure results in a partial halt of the Project, the parties shall negotiate the fee for the remainder of the Project.
- 3.5 Priority**
- 3.5.1 Where there is inconsistency between the Contract and the Standard Terms and Conditions, the Contract will be deemed to have priority.
- 3.6 Governing Law and Settlement of Disputes**
- 3.6.1 The formation, interpretation, and implementation of the Contract shall be governed by the laws of Denmark.
- 3.6.2 To the greatest extent possible, disputes arising in relation to the Contract, the Proposal, the execution of the Project, or the relationship between the Client and DIAB, shall be settled through informal friendly negotiations.
- 3.6.3 In the case that amicable settlement cannot be reached through friendly negotiations, settlement of disputes shall take place in Denmark.
- 4.0 Fees and Charges**
- 4.1 The concept of actual and effective time**
- 4.1.1 When work for a Client is performed at desk in DIAB' office, only actual and effective working time is subject to billing. Any time spent on tasks not related to the Project will be deemed as in-effective time, and will not be billed. When a Project related task is not performed as efficiently as reasonably possible due to reasons that are unrelated to the Project or the Client, the billable working time will be discounted accordingly.
- 4.1.2 When DIAB staff is traveling away from the DIAB office on specific Client business, and where a full normal working day is occupied as a result, DIAB will charge for actual and effective working time, however minimum one full working day (8 hours). However, in case that only part of a normal working day (less than 8 hours) is spent outside the DIAB office on such Client business; only the actual amount of hours away from the office will be billed for in connection with the trip.
- 4.1.3 In general DIAB will arrange that travel take place outside normal office hours. Where this is possible traveling time is normally subject to a discount.
- 4.2 Fee basis**
- 4.2.1 DIAB normally accepts a Project on a fixed fee basis. Fixed fee offers are based on estimates of actual time consumption, reflecting such factors as complexity, risk, urgency and amount of re-sellable and re-useable know-how developed.
- 4.2.2 From time-to-time DIAB charges on a per-diem basis according to fixed hourly rates or on an ad-hoc basis according actual time consumed.
- 4.2.3 DIAB only charges for effective time worked on behalf of a Client. Under this principle there is no limit on how many hours one person can bill for per day, as long as it is actual hours and effective time.
- 4.2.4 The Client shall bear the risk of any exchange rate loss or gain. Such loss or gain will be charged to the Client.
- 4.3 Dealing with outlays**
- 4.3.1 The Client will be billed for significant, reasonable, documented outlay. Outlays will be invoiced to the Client at the end of the billing period.
- 4.3.2 Outlays related to DIAB services for the Client include documents preparation and submission, translation fee, lawyer fee, travel, and authority fees, and other relevant outlays.
- 4.3.3 Budget estimates for larger outlay amounts associated with carrying out the Project will normally be made by DIAB and approved by the Client prior to Project launch.
- 4.3.4 DIAB may make relevant outlays up to the approved amounts without further approval of the Client. DIAB will normally seek approval of the Client for other significant outlays.
- 4.3.5 DIAB will normally invoice the Client 50% of the agreed total Project or Project module fee prior to the launch of the Project or Project module, and the remaining fees and outlays upon completion of the Project or Project module.
- 4.3.6 The Client always has the right to request, at no charge, a detail of their account statement as compared to the original estimate and DIAB will provide this detail to the Client without unreasonable delay.
- 4.3.7 DIAB normally invoices on net cash-basis. Overdue payment is subject to monthly interest charges of 1.5%, not adding interest on interest.
- 4.3.8 Fees and outlays on DIAB' invoices are subject to VAT in China and VAT in the country where the Client is billed (when applicable).
- 5.0 Confidentiality and non-conflicts of interests**
- 5.1 Mutual Confidentiality**
- 5.1.1 Both DIAB and the Client will refrain from disclosing to any third party any proprietary or confidential information obtained from each other without prior written consent.
- 5.1.2 The mutual Confidentiality obligation does not include disclosure needed in order to comply with relevant law or court order.
- 5.1.3 The mutual Confidentiality obligation will not apply to any information, which is or becomes generally available other than through a breach of an obligation under this clause.
- 5.2 Mutual non-solicitation of employment**
- The Client and DIAB each agree not to solicit employment of, or to hire for employment, the other party's employees who are involved in the Project for a period of two years after the Project has concluded. If the Client or DIAB violates this clause, unless otherwise agreed, it will pay compensation to the other party in the form of a lump sum of EUR 100,000 as compensation
- 5.3 Ownership of Intellectual Property**
- 5.3.1 If, under the Contract, DIAB performs work that results in the development of any intellectual property (methods, publications, non-confidential reports, etc.), such intellectual property shall remain the property of DIAB. The Client will be granted the necessary rights to the use of such intellectual property.
- 5.3.2 DIAB may use any information obtained during the performance of the Project in relation to projects for other clients, subject to not being in breach of any Confidentiality obligations under these Standard Terms and Conditions.
- 6.0 Reservations and limitation to liability**
- 6.1 Reservation regarding business and service scope**
- 6.1.1 Due to restrictions in the laws on foreign invested enterprises in China DIAB is registered as a business consultancy firm, not a foreign law firm and CPA firm. As such, legal or financial information provided must not be considered exhaustive analysis of the law or legal system in China, legal or tax opinion, due diligence, but rather information on relevant aspects of the Chinese business and investment environment. Clients should always seek final opinion and verification of such work with a registered law firm and CPA firm.
- 6.2 Liability limitation**
- 6.2.1 DIAB's services are generally of high quality and are based on substantial professional experience in doing business in China. Therefore, in a period of up to one year after the completion of a Project DIAB will accept liability to pay damages in respect of proven direct loss or damage suffered by the Client as a result of substantial breach of DIAB' contractual obligations. Such liability shall be limited to a maximum of 5 times the total fee paid in respect of the particular Project or, if several independent Project modules are carried out for the same Client, the total fee paid in respect of the particular independent Project module in relation to which damages occur.
- 6.2.2 DIAB accepts no liability in relation to any indirect damages to the Client that arise in relation to the performance of its services.