



**AIFC IMPLIED TERMS IN CONTRACTS AND  
UNFAIR TERMS REGULATIONS**

**AIFC REGULATIONS No. 6 of 2017**

(with amendments as of 10 June 2022, which  
commence on 1 October 2022)

**December 20, 2017  
Astana, Kazakhstan**



## CONTENTS

### PART 1: GENERAL

1. Name
2. Date of enactment
3. Commencement
4. Legislative authority
5. Application of these Regulations
6. Interpretation

### PART 2: IMPLIED TERMS IN CONTRACTS

#### CHAPTER 1: APPLICATION

7. Application and scope of Part 2

#### CHAPTER 2: CONTRACTS OF TRANSFER

8. Application of Chapter 2 and key concepts
9. Contracts of Transfer: implied terms about title
10. Contracts of Transfer by Description: implied terms
11. Contracts of Transfer: implied terms about quality or fitness
12. Contracts of Transfer by Sample: implied term

#### CHAPTER 3: CONTRACTS OF HIRE

13. Application of Chapter 3 and key concepts
14. Contract of Hire: implied terms about right to transfer possession
15. Contracts of Hire by description: implied terms
16. Contracts of Hire: implied terms about quality or fitness
17. Contracts of Hire by Sample: implied term

#### CHAPTER 4: CONTRACTS FOR SUPPLY OF SERVICES

18. Application of Chapter 4 and key concepts
19. Contracts for Supply of Services: implied term about care and skill
20. Contracts for Supply of Services: implied term about time for performance

#### CHAPTER 5: OTHER TERMS

21. Application of Chapter 5
22. Contracts of Transfer or Hire: requirement to repair or replace
23. Contracts of Transfer or Hire: conformity with the contract
24. Contracts of Transfer: property must be ascertained
25. Contracts of Transfer: passing of risk
26. Contracts of Transfer: undivided shares in Property forming part of bulk
27. Presumed consent by co-owners to dealings in bulk Property
28. Contracts of Transfer: rules about Delivery
29. Contracts of Transfer: Delivery of wrong quantity
30. Contracts of Transfer: Delivery to carrier
31. Contracts of Transfer: Transferee's right to examine Property
32. Contracts of Transfer: acceptance of Property
33. Contracts of Transfer or Hire: Delivery of Property not in conformity with contract

#### CHAPTER 6: GENERAL



- 34. Rights enforceable by Action
- 35. Operation of other provisions
- 36. Exclusion of implied terms

### **PART 3: AUCTIONS**

- 37. Auction sales

### **PART 4: UNFAIR CONTRACT TERMS AND CONSUMER NOTICES**

#### **CHAPTER 1: INTRODUCTORY**

- 38. Application of Part 4

#### **CHAPTER 2: CONTRACTS OTHER THAN CONSUMER CONTRACTS**

- 38-1. Chapter 2 does not apply to Consumer Contracts etc.
- 39. Scope of Chapter 2
- 40. Liability for Negligence
- 41. Liability arising under contract
- 42. Implied term obligations
- 43. The reasonableness test
- 44. Varieties of exemption clause

#### **CHAPTER 3: CONSUMER CONTRACTS AND CONSUMER NOTICES**

- 45. Chapter 3 applies to Consumer Contracts and Consumer Notices
- 46. What is a Consumer Contract or Consumer Notice
- 47. Who is a Trader or Consumer
- 48. Requirement for contract terms and Consumer Notices to be fair
- 49. Contract terms that may or must be regarded as unfair
- 50. Exclusion from assessment of fairness
- 51. Bar on exclusion or restriction of liability for Negligence
- 52. Scope of section 51
- 53. Effect of unfair term on rest of contract
- 54. Requirement for transparency
- 55. Contract terms that may have different meanings
- 56. Duty of the Court to consider fairness of term
- 57. Application of rules to secondary contracts
- 58. Disapplication of rules to mandatory terms and Notices

#### **SCHEDULE 1: INTERPRETATION**

- 1. Definitions for these Regulations

#### **SCHEDULE 1-1 CONSUMER CONTRACT TERMS THAT MAY BE REGARDED AS UNFAIR**

- 1. Exclusion of liability for death or Personal Injury etc.
- 2. Exclusion of liability for non-performance or inadequate performance etc.
- 3. Provision of services dependent on Trader's will alone
- 4. Retention of sums paid by Consumer if Consumer decides not to conclude or perform
- 5. Disproportionately high sum payable if Consumer decides not to conclude or perform
- 6. Disproportionately high sum payable if Consumer does not fulfil obligations
- 7. Trader authorised to dissolve contract on discretionary basis or retain sums for unsupplied services



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

8. Termination of contract by Trader without reasonable notice
9. Automatic extension of contract of fixed duration
10. Terms with which Consumer had no real opportunity of becoming acquainted
11. Unilateral alteration of terms by Trader
12. Determination of characteristics of contract subject matter by Trader
13. Unilateral alteration of characteristics of Goods etc. by Trader
14. Discretion by Trader to decide price
15. Trader permitted to increase price without cancellation rights
16. Trader given right to determine whether supply in conformity with contract or exclusive right to interpret contract
17. Limitation of Trader's obligations for agent commitments or making Trader's commitments subject to compliance with formalities
18. Consumer alone required to fulfil obligations
19. Unilateral transfer of Trader's rights and obligations under contract
20. Excluding or hindering Consumer's right to exercise legal remedies

### PART 2: SCOPE OF PART 1

21. Financial services: unilateral termination without notice
22. Financial services: unilateral alteration of terms
23. Contracts that last indefinitely
24. Sale of Securities, foreign currency etc.
25. Price-indexation clauses



### PART 1: GENERAL

**1. Name**

These Regulations are the *AIFC Implied Terms in Contracts and Unfair Terms Regulations 2017*.

**2. Date of enactment**

These Regulations are enacted on the day they are adopted by the Governor.

**3. Commencement**

These Regulations commence on 1 January 2018.

**4. Legislative authority**

These Regulations are adopted by the Governor under article 4 of the Constitutional Statute and subparagraph 3) of paragraph 9 of the Management Council Resolution on AIFC Bodies.

**5. Application of these Regulations**

These Regulations apply within the jurisdiction of the AIFC.

**6. Interpretation**

Schedule 1 contains definitions and other interpretative provisions used in these Regulations.



## PART 2: IMPLIED TERMS IN CONTRACTS

### CHAPTER 1: APPLICATION

#### 7. Application and scope of Part 2

- (1) This Part applies to every contract governed by the Acting Law of the AIFC.
- (2) However, this Part does not apply to:
  - (a) a contract so far as it relates to real property; or
  - (b) a contract so far as it relates:
    - (i) to the formation or dissolution of a Body Corporate or unincorporated association; or
    - (ii) to its constitution or the rights or obligations of its members or partners; or
  - (c) a contract so far as it relates to the creation or transfer of Securities; or
  - (d) any contract so far as it relates to other things in action or money.

### CHAPTER 2: CONTRACTS OF TRANSFER

#### 8. Application of Chapter 2 and key concepts

- (1) This Chapter applies to Contracts of Transfer.
- (2) A **Contract of Transfer** is a contract by which a Person (the **Transferor**) transfers the title in Property (the **Transferred Property**) to another Person (the **Transferee**).
- (3) A Contract of Transfer includes an Agreement to Transfer.
- (4) An **Agreement to Transfer** is a contract by which a Person (also the **Transferor**) agrees to transfer the title in Property (also the **Transferred Property**) to another Person (also the **Transferee**).
- (5) An Agreement to Transfer becomes a Contract of Transfer when the time elapses, or the terms are fulfilled, subject to which the title to the Transferred Property is to be transferred under the contract.
- (6) A Contract of Transfer is a **Contract of Transfer by Description** if the Transferred Property is ascertained under the contract by description.
- (7) The fact that the Transferred Property is selected by the Transferee does not, of itself, prevent a Contract of Transfer from being a Contract of Transfer by Description.
- (8) A Contract of Transfer is a **Contract of Transfer by Sample** if there is an express or implied term to that effect in the contract.
- (9) In these Regulations:
  - (a) a reference to the **Transferor** includes a reference to a Person to whom the Transferor's duties under the Contract of Transfer have passed; and



- (b) a reference to the **Transferee** includes a reference to a Person to whom the Transferee's rights under the Contract of Transfer have passed.

**9. Contracts of Transfer: implied terms about title**

- (1) In a Contract of Transfer (other than a contract to which subsection (3) applies) there is an implied term on the part of the Transferor that the Transferor has a right to transfer the title to the Transferred Property and, if the contract is an Agreement to Transfer, the Transferor will have a right to transfer the title in the Transferred Property when the Property is to pass.
- (2) In a Contract of Transfer (other than one to which subsection (3) applies) there is also an implied term that:
  - (a) the Transferred Property is free, and will remain free until the time when title in the Property is to pass, from any Third Party's Property right not disclosed or known to the Transferee before the contract was made; and
  - (b) the Transferee will enjoy quiet possession of the Property except so far as it may be disturbed by the owner or other Person entitled to the benefit of any Third Party's Property right disclosed or known to the Transferee before the contract was made.
- (3) This subsection applies to a Contract of Transfer if it appears from the contract, or is to be inferred from its circumstances, an intention that the Transferor should Transfer only the title that the Transferee or a Third Party may have.
- (4) In a Contract of Transfer to which subsection (3) applies there is an implied term that all Third Parties Property rights known to the Transferor and not known to the Transferee were disclosed to the Transferee before the contract was made.
- (5) In a Contract of Transfer to which subsection (3) applies there is also an implied term that none of the following will disturb the Transferee's quiet possession of the Transferred Property:
  - (a) the Transferor;
  - (b) if the parties to the contract intend that the Transferor should transfer only the title that a Third Party may have—the Third Party;
  - (c) any Person claiming through or under the Transferor or Third Party otherwise than under a Third Party Property right disclosed or known to the Transferee before the contract was made.

**10. Contracts of Transfer by Description: implied terms**

- (1) In a Contract of Transfer by Description there is an implied term that the Transferred Property will correspond with the description.
- (2) If the Contract of Transfer is by a Contract of Transfer by Sample as well as a Contract of Transfer by Description, it is not sufficient that the bulk of the Transferred Property corresponds with the sample if it does not also correspond with the description.

**11. Contracts of Transfer: implied terms about quality or fitness**



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

- (1) Subject to section 12 (Contracts of Transfer by Sample: implied term) and subject to any other AIFC Regulations, there is no implied term about the quality or fitness for any particular purpose of the Property Transferred under a Contract of Transfer.
- (2) However, if the Transferor sells or supplies the Transferred Property in the course of Business, there is an implied term that the Property is of satisfactory quality.
- (3) For this Chapter, the quality of Property is satisfactory if it meets the standard that a reasonable person would regard as satisfactory, taking account of any description of the Property, the price (if relevant) and all the other relevant circumstances, and is unsatisfactory if it does not meet that standard.
- (4) For this Chapter, the quality of Property includes its state and condition and the following in appropriate cases:
  - (a) fitness for all the purposes for which Property of that kind is commonly sold or supplied;
  - (b) appearance and finish;
  - (c) freedom from minor defects;
  - (d) safety;
  - (e) durability.
- (5) The term implied by subsection (2) does not extend to any matter making the quality of Property unsatisfactory:
  - (a) that was specifically drawn to the Transferee's attention before the Contract of Transfer was made; or
  - (b) if the Transferee examined the Property before the contract was made—that an examination in the circumstances made available ought to have revealed; or
  - (c) if the contract is a Contract of Transfer by Sample—that would have been apparent on a reasonable examination of the sample.
- (6) Also, if the Transferor sells or supplies the Transferred Property in the course of Business and the Transferee, expressly or by implication, made known to the Transferor in the course of negotiations any particular purpose for which the Property was being bought, there is an implied term that the Transferred Property is reasonably fit for that purpose, whether or not it is a purpose for which Property of that kind is commonly supplied, except if the circumstances show that the Transferee did not rely, or that it would have been unreasonable for the Transferee to rely, on the skill or judgement of the Transferor.
- (7) This section applies to a sale by a Person who, in the course of Business, is acting as agent for another Person in the same way as it applies to a sale by a principal in the course of Business.

### **12. Contracts of Transfer by Sample: implied term**

In a Contract of Transfer by Sample there is an implied term that:

- (a) the bulk will correspond with the sample in quality; and



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

- (b) the Transferee will have a reasonable opportunity of comparing the bulk with the sample; and
- (c) the Transferred Property will be free from any defect, making its quality unsatisfactory, that would not be apparent on reasonable examination of the sample.

### CHAPTER 3: CONTRACTS OF HIRE

#### 13. Application of Chapter 3 and key concepts

- (1) This Chapter applies to Contracts of Hire.
- (2) A **Contract of Hire** is a contract by which a Person (the **Supplier**) hires out Property (the **Hired Property**) to another Person (the **Hirer**).
- (3) A Contract of Hire includes an Agreement to Hire.
- (4) An **Agreement to Hire** is a contract by which a Person (also the **Supplier**) agrees to hire out Property (also the **Hired Property**) to another Person (also the **Hirer**).
- (5) An Agreement to Hire becomes a Contract of Hire when the time elapses, or the terms are fulfilled, subject to which the Hired Property is to be hired out under the contract.
- (6) A Contract of Hire is a **Contract of Hire by Description** if the Hired Property is ascertained under the contract by description.
- (7) The fact that the Hired Property is selected by the Hirer does not, of itself, prevent a Contract of Hire from being a Contract of Hire by Description.
- (8) A Contract of Hire is a **Contract of Hire by Sample** if there is an express or implied term to that effect in the contract.
- (9) In these Regulations:
  - (a) a reference to the **Supplier** includes a reference to a Person to whom the Supplier's rights under the Contract of Hire have passed; and
  - (b) a reference to the **Hirer** includes a reference to a Person to whom the Hirer's rights under the Contract of hire have passed.

#### 14. Contract of Hire: implied terms about right to transfer possession

- (1) In a Contract of Hire there is an implied term on the part of the Supplier that the Supplier has a right to transfer possession of the Hired Property by way of hire for the period of the hire and, if the contract is an Agreement to Hire, the Supplier will have that right at the time of the hire.
- (2) In a Contract of Hire there is also an implied term that the Hirer will enjoy quiet possession of the Hired Property for the period of the hire except so far as the possession may be disturbed by the owner or other Person entitled to the benefit of any charge or encumbrance disclosed or known to the Hirer before the contract was made.
- (3) This section does not affect the right of the Supplier to repossess the Hired Property under an express or implied term of the Contract of Hire.

#### 15. Contracts of Hire by description: implied terms



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

- (1) In a Contract of Hire by Description there is an implied term that the Hired Property will correspond with the description.
- (2) If the Contract of Hire is a Contract of Hire by Sample as well as a Contract of Hire by Description, it is not sufficient that the bulk of the Hired Property corresponds with the sample if it does not also correspond with the description.

### 16. Contracts of Hire: implied terms about quality or fitness

- (1) Subject to section 17 (Contracts of Hire by Sample: implied term) and subject to the provisions of any other AIFC Regulations, there is no implied term about the quality or fitness for any particular purpose of Property hired out under a Contract of Hire.
- (2) However, if the Supplier hires the Hired Property in the course of Business, there is an implied term that the Property is of satisfactory quality.
- (3) For this Chapter, the quality of Property is satisfactory if it meets the standard that a reasonable person would regard as satisfactory, taking account of any description of the Property, the consideration for the hire (if relevant) and all the other relevant circumstances, and is unsatisfactory if it does not meet that standard.
- (4) For this Chapter, the quality of Property includes its state and condition and the following in appropriate cases:
  - (a) fitness for all the purposes for which Property of that kind is commonly supplied;
  - (b) appearance and finish;
  - (c) freedom from minor defects;
  - (d) safety;
  - (e) durability.
- (5) The term implied by subsection (2) does not extend to any matter making the quality of the Property unsatisfactory:
  - (a) that was specifically drawn to the Hirer's attention before the Contract of Hire was made; or
  - (b) if the Hirer examined the Property before the contract was made—that an examination in the circumstances made available ought to have revealed; or
  - (c) if the contract is a Contract of Hire by Sample—that would have been apparent on a reasonable examination of the sample.
- (6) Also, if the Supplier hires out the Property in the course of Business and the Hirer, expressly or by implication, has made known to the Supplier in the course of negotiations any particular purpose for which the Property is being hired, there is an implied term that the Hired Property is reasonably fit for that purpose, whether or not it is a purpose for which Property of that kind is commonly hired, except where the circumstances show that the Hirer did not rely, or that it would have been unreasonable for the Hirer to rely, on the skill or judgement of the Supplier.
- (7) This section applies to a hire by a Person who, in the course of Business, is acting as



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

agent for another Person in the same way as it applies to a hire by a principal in the course of Business.

### 17. Contracts of Hire by Sample: implied term

In a Contract of Hire by Sample there is an implied term that:

- (a) the bulk will correspond with the sample in quality; and
- (b) the Hirer will have a reasonable opportunity of comparing the bulk with the sample; and
- (c) the Hired Property will be free from any defect, making its quality unsatisfactory, that would not be apparent on reasonable examination of the sample.

## CHAPTER 4: CONTRACTS FOR SUPPLY OF SERVICES

### 18. Application of Chapter 4 and key concepts

- (1) This Chapter applies to Contracts for the Supply of Services.
- (2) A **Contract for the Supply of Services** is a contract by which a Person (the **Supplier**), in the course of Business, provides (or agrees to provide) services (the **Contracted Services**) to another Person, whether or not the title to Property is also transferred (or agreed to be transferred), or Property is hired out (or agreed to be hired out), under the contract.
- (3) However, a Contract for the Supply of Services does not include a contract of employment.
- (4) To remove any doubt, a Contract for the Supply of Services may also be a Contract of Transfer or Contact of Hire (or both).

### 19. Contracts for Supply of Services: implied term about care and skill

In a Contract for the Supply of Services there is an implied term that the Supplier will provide the Contracted Services with reasonable care and skill.

### 20. Contracts for Supply of Services: implied term about time for performance

- (1) If, under a Contract for the Supply of Services, the time for the Contracted Services to be provided is not fixed by the contract, left to be fixed in a way agreed by the contract or decided by the course of dealing between the parties, there is an implied term that the Supplier will provide the Contracted Services within a reasonable time.
- (2) What is a reasonable time is a question of fact.

## CHAPTER 5: OTHER TERMS

### 21. Application of Chapter 5

This Chapter applies to Contracts of Transfer except so far as is otherwise provided.

### 22. Contracts of Transfer or Hire: requirement to repair or replace

- (1) If the Transferee under a Contract of Transfer requires the Transferor to repair or replace the Transferred Property, the Transferee must not reject the Transferred Property and



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

terminate the contract until the Transferor has been allowed a reasonable time to repair or replace the Transferred Property.

- (2) If the Hirer under a Contract of Hire requires the Supplier to repair or replace the Hired Property, the Hirer must not reject the Hired Property and terminate the contract until the Supplier has been allowed a reasonable time to repair or replace the Hired Property.
- (3) In this section:

*repair* means bring the Property into conformity with the contract.

### 23. Contracts of Transfer or Hire: conformity with the contract

Property does not conform to a Contract of Transfer or Contract of Hire if:

- (a) there is, in relation to the Property, a breach of an express or implied term of the contract; or
- (b) if the contract is also a Contract for the Supply of Services—installation of the Property forms part of the contract, and the Property is installed by the Transferor, or under the Transferor's responsibility, in breach of the term implied by section 19 (Contracts for Supply of Services: implied term about care and skill).

### 24. Contracts of Transfer: property must be ascertained

Subject to section 26 (Contracts of Transfer: undivided shares in Property forming part of bulk), if a Contract of Transfer is for the sale of unascertained Property, title in the Property is not transferred to the Transferee unless and until the Property is ascertained.

### 25. Contracts of Transfer: passing of risk

- (1) Property remains at the Transferor's risk until the property in it is transferred to the Transferee, but, when the property in it is transferred to the Transferee, the Property is at the Transferee's risk, whether or not Delivery has been made.
- (2) But, if Delivery has been delayed through the fault of either the Transferee or Transferor, the Property is at the risk of the party at fault for any loss that might not have happened apart from the delay.
- (3) This section does not affect the duties or liabilities of either Transferor or Transferee as a bailee of the Property of the other.

### 26. Contracts of Transfer: undivided shares in Property forming part of bulk

- (1) This section applies to a Contract of Transfer for the sale of a specified quantity of unascertained Property if:
  - (a) the Property or some of it forms part of a bulk that is identified either in the contract or by subsequent agreement between the parties; and
  - (b) the Transferee pays the price for some or all of the Property that is the subject of the contract and forms part of the bulk.
- (2) As soon as this section applies to the contract or, if the parties agree a later time, at the later time:



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

- (a) Property in an undivided share in the bulk is transferred to the Transferee; and
  - (b) the Transferee becomes an owner in common of the bulk.
- (3) The undivided share of the Transferee in the bulk at any time is the share that the quantity of Property paid for and due to the Transferee out of the bulk bears to the quantity of Property in the bulk at that time.
- (4) However, if there are 2 or more Transferees and the total of the undivided shares of the Transferees in the bulk under subsection (3) would at any time exceed the whole of the bulk at that time, the undivided share in the bulk of each Transferee is reduced proportionately so that the aggregate of the undivided shares is equal to the whole bulk.
- (5) If the Transferee has paid the price for only some of the Property due to the Transferee out of the bulk, any Delivery to the Transferee out of the bulk is attributed in the first place to the Property for which payment has been made.
- (6) For this section, payment of part of the price for any Property is treated as payment for a corresponding part of the Property.
- (7) In this section:

**bulk** means a mass or collection of Property of the same kind that:

- (a) is contained in a defined space or area; and
- (b) is such that any Property in it is interchangeable with any other Property in it of the same number or quantity.

### 27. Presumed consent by co-owners to dealings in bulk Property

- (1) If a Person has become an owner in common of a bulk under section 26 (Contracts of Transfer: undivided shares in Property forming part of bulk), the Person is conclusively presumed to have agreed to:
- (a) any Delivery of Property out of the bulk to any other owner in common of the bulk if the Property is due to the other owner under the other owner's contract; and
  - (b) any dealing with, removal, Delivery or disposal of Property in the bulk by any other owner in common of the bulk so far as the Property falls within that owner's undivided share in the bulk at the time of the dealing, removal, Delivery or disposal.
- (2) A cause of action does not accrue to a Person against another Person because the other Person acted in accordance with subsection (1) in reliance on any agreement presumed to have been given under that subsection.
- (3) This section does not:
- (a) impose an obligation on a Transferee of Property out of a bulk to compensate any other buyer of Property out of the bulk for any shortfall in the Property received by the other buyer; or
  - (b) affect any contractual arrangement between Transferees of Property out of a bulk for adjustments between themselves; or



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

- (c) affect the rights of any Transferee under the Transferee's contract.
- (4) In this section:  
*bulk* has the meaning given by section 26(7).

### 28. Contracts of Transfer: rules about Delivery

- (1) Whether it is for the Transferee to take possession of the Transferred Property under a Contract of Transfer or for the Transferor to send it to the Transferee is a question depending in each case on the contract, express or implied, between the parties.
- (2) In the absence of any applicable provision of the contract, express or implied, between the parties, the place of Delivery is the Transferor's place of Business if the Transferor has one, and if not, the Transferor residence.
- (3) If under the Contract of Transfer the Transferor is bound to send the Transferred Property to the Transferee, but no time for sending it is fixed, the Transferor is bound to send it within a reasonable time and at a reasonable hour.
- (4) If, at the time of sale, the Transferred Property is in the possession of a Third Party, there is no Delivery by Transferor to Transferee unless and until the Third Party acknowledges to the Transferee that the Third Party holds the Property on the Transferee's behalf. However, this subsection does not affect the operation, the issue or transfer of any document or instrument of title to Property.
- (5) The expenses of and incidental to putting the Transferred Property into a deliverable state must be borne by the Transferor.
- (6) For this section, Property is in a **deliverable state** if it is in a state such that the Transferee of the Property would be bound to take Delivery of it under the Contract of Transfer.

### 29. Contracts of Transfer: Delivery of wrong quantity

- (1) If the Transferor Delivers to the Transferee a quantity of Property less than the Transferor contracted to transfer, the Transferee may reject it.
- (2) If the Transferor Delivers to the Transferee a quantity of Property larger than the Transferor contracted to transfer, the Transferee may accept the Property included in the contract and reject the rest, or the Transferee may reject the whole.
- (3) If the Transferor Delivers to the Transferee a quantity of Property larger than the Transferor contracted to transfer and the Transferee accepts the whole of the Property Delivered, the Transferee must pay for it at the contract rate.
- (4) This section is subject to any usage of trade, special agreement, or course of dealing between the parties.

### 30. Contracts of Transfer: Delivery to carrier

- (1) If, under a Contract of Transfer for the sale or supply of Property, the Transferor is authorised or required to send the Property to the Transferee, Delivery of the Property to a carrier (whether or not named by the Transferee) for the purpose of transmission to the Transferee is presumed to be a Delivery of the Property to the Transferee.
- (2) Unless otherwise authorised by the Transferee, the Transferor must make a contract with



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

the carrier on behalf of the Transferee that is reasonable having regard to the nature of the Property and the other circumstances of the case. If the Transferor fails to do so and the Property is lost or damaged in course of transit, the Transferee may decline to treat the Delivery to the carrier as a Delivery under the contract or may hold the Transferor responsible in damages.

### 31. **Contracts of Transfer: Transferee's right to examine Property**

When the Transferor tenders Delivery of Property to the Transferee, the Transferor must give the Transferee on request a reasonable opportunity of examining the Property for the purpose of ascertaining whether it is in conformity with the Contract of Transfer and, if the contract is a Contract of Transfer by Sample, of comparing the bulk with the sample.

### 32. **Contracts of Transfer: acceptance of Property**

- (1) The Transferee is taken to have accepted the Property if:
  - (a) the Transferee tells the Transferor that the Transferee has accepted it; or
  - (b) the Property is Delivered to the Transferee and the Transferee does something in relation to it that is inconsistent with the Transferor's ownership of the Property.
- (2) However, if Property is Delivered to the Transferee and the Transferee has not previously examined it, the Transferee is not taken to have accepted it under subsection (1) until the Transferee has had a reasonable opportunity of examining it for the purpose of:
  - (a) ascertaining whether it is in conformity with the contract; and
  - (b) if the contract is a Contract of Transfer by Sample—comparing the bulk with the sample.
- (3) The Transferee is also taken to have accepted the Property if, after the lapse of a reasonable time, the Transferee retains the Property without telling the Transferor that the Property has been rejected.

### 33. **Contracts of Transfer or Hire: Delivery of Property not in conformity with contract**

- (1) For this section, Property is ***affected by a breach*** if because of the breach it is not in conformity with the Contract of Transfer or Contract of Hire.
- (2) The Transferee may reject Property affected by a breach until the Transferee accepts it, but not after the Transferee has accepted it.
- (3) If Property affected by a breach is Delivered to the Transferee and the Transferee rejects it, the Transferee is not bound to return it to the Transferor, but may instead tell the Transferor that the Transferee refuses to accept it.
- (4) If:
  - (a) the Transferee has the right to reject the Property because of a breach by the Transferor that affects some or all of it; but
  - (b) the Transferee accepts some of the Property, including, if there is any Property unaffected by the breach, all that Property;

the Transferee does not by accepting it lose the right to reject the rest.



- (5) In the application of this section to a Contract of Hire:
  - (a) a reference to the *Transferee* is a reference to the Hirer; and
  - (b) a reference to the *Transferor* is a reference to the Supplier.

### CHAPTER 6: GENERAL

#### 34. Rights enforceable by Action

If a right, duty or liability is established by this Part, it may (unless otherwise provided by this Part) be enforced by Action.

#### 35. Operation of other provisions

- (1) A provision of the AIFC Insolvency Regulations, or of any rules made under or for those Regulations, relating to contracts applies despite anything in this Part.
- (2) A provision of the AIFC Contract Regulations or AIFC Regulations on Obligations applies to a contract to which this Part applies, except so far as it inconsistent with a provision of this Part.
- (3) A provision of this Part about contracts of sale does not apply to a transaction in the form of a contract of sale or supply that is intended to operate by way of security.

#### 36. Exclusion of implied terms

- (1) Subject to Part 4 (Unfair contract terms and consumer notices), if a right, duty or liability would arise under a contract because of this Part, it may be excluded or varied by express agreement, by the course of dealing between the parties or by usage that binds both parties to the contract.
- (2) However, an express term does not exclude a term implied by this Part unless inconsistent with it.
- (3) This Part does not affect any rule of law that imposes on a contracting party a duty, or implies a term, stricter than that imposed under this Part.



**PART 3: AUCTIONS**

**37. Auction sales**

- (1) If Property is put up for sale by auction in lots, each lot is taken to be the subject of a separate Contract of Transfer.
- (2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in another customary way. Until the announcement is made, any bidder may retract the bidder's bid.
- (3) A sale by auction may be notified to be subject to a reserve, and a right to bid may also be reserved expressly by or on behalf of the Transferor.
- (4) If, for a sale by auction, a right to bid is not expressly reserved by or on behalf of the Transferor, it is not lawful:
  - (a) for the Transferor to bid, or to use another Person to bid on behalf of the Transferor, at the sale: or
  - (b) for the auctioneer knowingly to take any bid from the Transferor or any Person acting on behalf of the Transferor.
- (5) A sale contravening subsection (4) may be treated as fraudulent by the Transferee.
- (6) If, for a sale by auction, a right to bid is expressly reserved by or on behalf of the Transferor (but not otherwise), the Transferor or any Person on behalf of the Transferor may bid at the auction.



**PART 4: UNFAIR TERMS: UNFAIR CONTRACT TERMS AND CONSUMER NOTICES**

**CHAPTER 1: INTRODUCTORY**

**38. Application of Part 4**

- (1) So far as it relates to liability in contract, this Part applies to any contract governed by the Acting Law of the AIFC.
- (2) So far as it relates to any other liability, this Part applies to any liability arising from, or in relation to, an act or omission in the AIFC.
- (3) This Part also applies to any Consumer Notice given in relation to any contract governed by the Acting Law of the AIFC.

**CHAPTER 2: CONTRACTS OTHER THAN CONSUMER CONTRACTS**

**38-1. Chapter 2 does not apply to Consumer Contracts etc.**

- (1) This Chapter does not apply to a Consumer Contract.
- (2) To remove any doubt, this Chapter does not apply to a Consumer Notice.

**39. Scope of Chapter 2**

- (1) This Chapter does not apply to:
  - (a) a contract of insurance (including a contract to pay an annuity on human life); or
  - (b) a contract so far as it relates to real property; or
  - (c) a contract so far as it relates to the creation, transfer or termination of a right or interest in any intellectual property; or
  - (d) any contract so far as it relates:
    - (i) to the formation or dissolution of a Body Corporate or unincorporated association; or
    - (ii) to its constitution or the rights or obligations of its members or partners; or
  - (e) a contract so far as it relates to the creation or transfer of Securities; or
  - (f) a contract of employment, except in favour of the employee; or
  - (g) a contract that:
    - (i) is either a Contract of Transfer or another contract under which the possession or ownership of Property passes; and
    - (ii) is made by parties whose places of Business are in the territories of different jurisdictions.
- (2) However, subsection (1)(g)(i) applies to a contract only if:
  - (a) the Property to which the contract applies is, at the time of the conclusion of the



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

contract, in the course of carriage, or will be carried, from the territory of one jurisdiction to the territory of another; or

- (b) the acts constituting the offer and acceptance have been done in the territories of different jurisdictions; or
- (c) the contract provides for the Property to be Delivered to the territory of a jurisdiction other than that within whose territory those acts were done.

### 40. Liability for Negligence

- (1) A Person cannot exclude or restrict liability for death or Personal Injury resulting from Negligence by relying on a contract term or a Notice.
- (2) A Person cannot exclude or restrict liability for any other loss or damage arising from Negligence by relying on a contract term or a Notice except so far as the term or Notice satisfies the requirement of reasonableness.
- (3) If a contract term or Notice purports to exclude or restrict liability for Negligence, a Person's agreement to or awareness of it is not, of itself, to be taken as indicating the Person's voluntary acceptance of any risk.
- (4) This section applies to a Notice whether the Notice is given to Persons generally or to particular Persons.

### 41. Liability arising under contract

- (1) This section applies between contracting parties if one of them (**A**) deals on the Written standard terms of business of the other (**B**).
- (2) As against A, B cannot by reference to any contract term:
  - (a) if B is in breach of contract—exclude or restrict any liability for the breach; or
  - (b) claim to be entitled:
    - (i) to render a contractual performance substantially different from the contractual performance that was reasonably expected of B; or
    - (ii) in relation to the whole or any part of B's contractual obligation, to render no performance at all;

except so far as (in any of the cases mentioned in paragraphs (a) and (b)) the contract term satisfies the requirement of reasonableness.

### 42. Implied term obligations

- (1) Liability for breach of the obligations arising from section 9 (Contracts of Transfer: implied terms about title) cannot be excluded or restricted by relying on any contract term.
- (2) Liability for breach of the obligations arising from any other provision of Chapters 2 (Contracts of Transfer), 3 (Contracts of Hire) and 4 (Contracts for Supply of Services) of Part 2 (Implied terms in contracts) cannot be excluded or restricted by relying on any contract term except so far as the term satisfies the requirement of reasonableness.

### 43. The reasonableness test



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

- (1) In relation to a contract term, the requirement of reasonableness under these Regulations is that the term must have been a fair and reasonable one to be included having regard to the circumstances that were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made.
- (2) In deciding whether a contract term satisfies the requirement of reasonableness, regard must be had in particular to any of the following matters that appear to be relevant:
  - (a) the strength of the bargaining positions of the parties relative to each other, taking into account, for example, alternative ways by which the customer's requirements could have been met;
  - (b) whether the customer received an inducement to agree to the term, or in accepting it had an opportunity of entering into a similar contract with other Persons but without having to accept a similar term;
  - (c) whether the customer knew or ought reasonably to have known of the existence and extent of the term, having regard, for example, to any custom of the trade and any previous course of dealing between the parties;
  - (d) if the term excludes or restricts any relevant liability if some condition is not complied with—whether it was reasonable at the time of the contract to expect that compliance with the condition would be practicable;
  - (e) whether the Goods were manufactured, processed or adapted to the special order of the customer.
- (3) However, this section does not prevent the Court or an arbitrator from holding, in accordance with any rule of law, that a term that purports to exclude or restrict any relevant liability is not a term of the contract.
- (4) In relation to a Notice (other than a Notice having contractual effect), the requirement of reasonableness under these Regulations is that it should be fair and reasonable to allow reliance on it, having regard to all the circumstances obtaining when the liability arose or (apart from the Notice) would have arisen.
- (5) If, relying on a contract term or Notice, a Person seeks to restrict liability to a specified amount, and the question arises (under these Regulations or any other AIFC Regulations) whether the term or Notice satisfies the requirement of reasonableness, regard must be had in particular (but, for a contract term, without limiting subsection (2)) to:
  - (a) the resources that the Person could expect to be available to the Person for the purpose of meeting the liability should it arise; and
  - (b) how far it was open to the Person to cover the liability by insurance.

#### 44. Varieties of exemption clause

- (1) To the extent that this Chapter prevents the exclusion or restriction of any liability, it also prevents:
  - (a) making the liability or its enforcement subject to restrictive or onerous conditions; and
  - (b) excluding or restricting any right or remedy in relation to the liability, or subjecting a Person to any prejudice for pursuing any right or remedy in relation to the liability; and



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

(c) excluding or restricting rules of evidence or procedure;

and (to that extent) sections 40 (Liability for Negligence) and 42 (Implied term obligations) also prevent excluding or restricting liability by reference to terms and Notices that exclude or restrict the relevant liability or obligation.

(2) A Written agreement to submit present or future differences to arbitration is not to be treated under this Chapter as excluding or restricting any liability.

### CHAPTER 3: CONSUMER CONTRACTS AND CONSUMER NOTICES

#### 45. Chapter 3 applies to Consumer Contracts and Consumer Notices

This Chapter applies to contracts that are Consumer Contracts and to Notices that are Consumer Notices.

#### 46. What is a Consumer Contract or Consumer Notice

(1) In these Regulations, a **Consumer Contract** is a contract between a Trader and a Consumer, other than a contract of employment or apprenticeship.

(2) In these Regulations, a **Consumer Notice** is a Notice to the extent that it:

(a) relates to rights or obligations as between a Trader and a Consumer; or

(b) purports to exclude or restrict a Trader's liability to a Consumer.

(3) However, a **Consumer Notice** does not include a Notice relating to rights, obligations or liabilities as between an employer and an employee.

(4) For subsection (2), it does not matter whether the Notice is expressed to apply to a Consumer if it is reasonable to assume that it is intended to be seen or heard by a Consumer.

#### 47. Who is a Trader or Consumer

(1) In these Regulations, a **Trader** is a Person (**A**) acting for purposes relating to A's trade, Business, craft or profession, whether acting personally or through another Person acting in A's name or on A's behalf.

(2) In these Regulations, a **Consumer** is an individual acting for purposes that are wholly or mainly outside the individual's trade, Business, craft or profession.

(3) A Trader claiming that an individual was not acting for purposes wholly or mainly outside the individual's trade, Business, craft or profession, must prove it.

#### 48. Requirement for contract terms and Consumer Notices to be fair

(1) An unfair term of a Consumer Contract is not binding on the Consumer.

(2) An unfair Consumer Notice is not binding on the Consumer.

(3) This does not prevent the Consumer from relying on the term or Notice if the Consumer chooses to do so.



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

- (4) A term of a Consumer Contract is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the Consumer.
- (5) Whether a term of a Consumer Contract is fair is to be decided:
  - (a) taking into account the nature of the subject matter of the contract; and
  - (b) by reference to all the circumstances existing when the term was agreed and to all the other terms of the contract or of any other contract on which it depends.
- (6) A Consumer Notice is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations to the detriment of the Consumer.
- (7) Whether a Consumer Notice is fair is to be decided:
  - (a) taking into account the nature of the subject matter of the Notice; and
  - (b) by reference to all the circumstances existing when the rights or obligations to which it relates arose and to the terms of any contract on which it depends.
- (8) This section does not affect the operation of section 51 (Bar on exclusion or restriction of liability for Negligence).

### **49. Contract terms that may or must be regarded as unfair**

- (1) Part 1 of Schedule 1-1 contains an indicative and non-exhaustive list of terms of Consumer Contracts that may be regarded as unfair for this Chapter.
- (2) Part 1 of Schedule 1-1 is subject to Part 2 of that Schedule; but a term listed in Part 2 of that Schedule may nevertheless be assessed for fairness under section 48 (Requirement for contract terms and Consumer Notices to be fair) unless section 50 (Exclusion from assessment of fairness) or section 58 (Disapplication of rules to mandatory terms and Notices) applies to it.

### **50. Exclusion from assessment of fairness**

- (1) A term of a Consumer Contract may not be assessed for fairness under section 48 (Requirement for contract terms and Consumer Notices to be fair) to the extent that:
  - (a) it specifies the main subject matter of the contract; or
  - (b) the assessment is of the appropriateness of the price payable under the contract by comparison with the Goods, Digital Content or services supplied under it.
- (2) Subsection (1) excludes a term from an assessment under section 48 only if it is transparent and prominent.
- (3) For this Chapter, a term is transparent if it is expressed in plain and intelligible language and, for a Written term, is legible.



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

(4) For this Chapter, a term is prominent if it is brought to the Consumer's attention in such a way that an average Consumer would be aware of the term.

(5) In subsection (4):

**average consumer** means a consumer who is reasonably well-informed, observant and circumspect.

(6) This section does not apply to a term of a contract listed in Part 1 of Schedule 1-1.

### 51. Bar on exclusion or restriction of liability for Negligence

(1) A Trader cannot by a term of a Consumer Contract or by a Consumer Notice exclude or restrict liability for death or Personal Injury resulting from Negligence.

(2) If a term of a Consumer Contract, or a Consumer Notice, purports to exclude or restrict a Trader's liability for Negligence, a Person is not to be taken to have voluntarily accepted any risk only because the Person agreed to or knew about the term or Notice.

(3) This section is subject to section 52 (which makes provision about the scope of this section).

### 52. Scope of section 51

(1) Section 51 (Bar on exclusion or restriction of liability for Negligence) does not apply to:

(a) any contract so far as it is a contract of insurance, including a contract to pay an annuity on human life; or

(b) any contract so far as it relates to the creation or transfer of an interest in land.

(2) Section 51 does not affect the validity of any discharge or indemnity given by a Person in consideration of the receipt by the Person of compensation in settlement of any claim the Person has.

### 53. Effect of unfair term on rest of contract

If a term of a Consumer Contract is not binding on the Consumer because of this Chapter, the contract continues, so far as practicable, to have effect in every other respect.

### 54. Requirement for transparency

(1) A Trader must ensure that a Written term of a Consumer Contract, or a Consumer Notice in Writing, is transparent.

(2) For subsection (1), a Consumer Notice is transparent if it is expressed in plain and intelligible language, and it is legible.

### 55. Contract terms that may have different meanings

If a term in a Consumer Contract, or a Consumer Notice, could have different meanings, the meaning that is most favourable to the Consumer is to prevail.

### 56. Duty of the Court to consider fairness of term

(1) Subsection (2) applies to proceedings before the Court that relate to a term of a Consumer Contract.



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

- (2) The Court must consider whether the term is fair even if none of the parties to the proceedings has raised that issue or indicated that it intends to raise it.
- (3) But subsection (2) does not apply unless the Court considers that it has before it sufficient legal and factual material to enable it to consider the fairness of the term.

### 57. Application of rules to secondary contracts

- (1) This section applies if a term of a contract (the **secondary contract**) reduces the rights or remedies, or increases the obligations, of a Person under another contract (the **main contract**).
- (2) The term is subject to the provisions of this Chapter that would apply to the term if it were in the main contract.
- (3) For this section, it does not matter:
  - (a) whether the parties to the secondary contract are the same as the parties to the main contract; or
  - (b) whether the secondary contract is a Consumer Contract.
- (4) This section does not apply if the secondary contract is a settlement of a claim arising under the main contract.

### 58. Disapplication of rules to mandatory terms and Notices

- (1) This Chapter does not apply to a term of a contract, or to a Notice, to the extent that it reflects mandatory statutory or regulatory provisions.
- (2) In subsection (1):

**mandatory statutory or regulatory provisions** includes rules that, according to the Acting Law of the AIFC, apply between the parties on the basis that no other arrangements have been established.



SCHEDULE 1: INTERPRETATION

1. Definitions for these Regulations

In these Regulations:

**Action** includes counterclaim and set-off.

**Agreement to Hire** has the meaning given by section 13.

**Agreement to Transfer** has the meaning given by section 8.

**AIFC** means the Astana International Financial Centre.

**AIFC Regulations** means regulations adopted by the Management Council or the Governor and includes, for example, these Regulations.

**Body Corporate** includes a company or other body corporate incorporated outside the AFC.

**Business** means any business, and includes any profession and the activities of any government department or local or public authority.

**Constitutional Statute** means the Constitutional Statute of the Republic of Kazakhstan dated 7 December 2015 entitled *On Astana International Financial Centre*.

**Consumer** has the meaning given by section 47 (Who is a Trader or Consumer).

**Consumer Contract** has the meaning given by 46 (What is a Consumer Contract or Consumer Notice).

**Consumer Notice** has the meaning given by section 46 (What is a Consumer Contract or Consumer Notice).

**Contracted Services**, in relation to a Contract for the Supply of Services, has the meaning given by section 18.

**Contract for the Supply of Services** has the meaning given by section 18.

**Contract of Hire, Contract of Hire by Description** and **Contract of Hire by Sample** have the meanings respectively given by section 13.

**Contract of Transfer, Contract of Transfer by Description** and **Contract of Transfer by Sample** have the meanings respectively given by section 8.

**Court** means the Astana International Financial Centre Court.

**Delivery** means voluntary transfer of possession from a Person to another Person, and, in sections 26 (Contracts of Transfer: undivided shares in Property forming part of bulk) and 27 (Presumed consent by co-owners to dealings in bulk Property), includes an appropriation of Property to the contract of sale that results in title in the Property being transferred to the Transferee.

**Digital Content** means data that is produced and supplied in a digital form.

**Goods** means any tangible moveable items, and includes water, gas and electricity, but if and only if they are put up for supply in a limited volume or set quantity.

**Hired Property**, in relation to a Contract of Hire, has the meaning given by section 13.



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

**Hirer**, in relation to a Contract of Hire, has the meaning given by section 13.

**Management Council** means the Management Council of the Astana International Financial Centre.

**Management Council Resolution on AIFC Bodies** means *The Structure of the Bodies of the Astana International Financial Centre*, adopted by resolution of the Management Council on 26 May 2016, as amended by resolution of the Management Council, *The Amendments and supplementations to the Structure of the Bodies of the Astana International Financial Centre*, adopted on 9 October 2017.

**Negligence** has the meaning given by section 1-1 of this Schedule 1 (Meaning of *Negligence*).

**Notice** includes an announcement, whether in Writing, and any other communication or purported communication.

**Personal Injury** includes any disease and any impairment of physical or mental condition.

**Person** includes any natural person or incorporated or unincorporated body, including a company, partnership, unincorporated association, government or state.

**Property** means all property other than real property, things in action and money.

**Securities** means any transferable instrument (including, for example, instruments representing or constituting stocks, shares, debentures, warrants, certificates, units or options in a company or other Body Corporate) or any rights to or interests in any transferable instrument.

**Supplier.**

- (a) in relation a Contract for the Supply of Services—has the meaning given by section 18; and
- (b) in relation to a Contract of Hire—has the meaning given by section 13.

**Third Party**, in relation to a contract, means a Person who is not a party to the contract.

**Trader** has the meaning given by section 47 (Who is a Trader or Consumer).

**Transferee**, in relation to a Contract of Transfer, has the meaning given by section 8.

**Transferor**, in relation to a Contract of Transfer, has the meaning given by section 8.

**Transferred Property**, in relation to a Contract of Transfer, has the meaning given by section 8.

**Writing** includes:

- (a) in relation to a certificate, instrument, Notice or other thing—the thing in any form that preserves a record of the information contained in it and is capable of being reproduced in tangible form including by electronic means; and
- (b) in relation to a communication—any method of communication that preserves a record of the information contained in it and is capable of being reproduced in tangible form, including by electronic means.



1-1. Meaning of ***Negligence***

- (1) In these Regulations, ***Negligence*** means the breach of:
  - (a) any obligation to take reasonable care or exercise reasonable skill in the performance of a contract if the obligation arises from an express or implied term of the contract; or
  - (b) any other duty under the Acting Law of the AIFC to take reasonable care or exercise reasonable skill.
- (2) For this section, it is immaterial:
  - (a) whether a breach of obligation of duty was inadvertent or intentional; or
  - (b) whether liability for it arises directly or vicariously.



**SCHEDULE 1-1 CONSUMER CONTRACT TERMS THAT MAY BE REGARDED AS UNFAIR**

**PART 1: LIST OF TERMS**

**1. Exclusion of liability for death or Personal Injury etc.**

A term that has the object or effect of excluding or limiting the Trader's liability in the event of the death of, or Personal Injury to, the Consumer resulting from an act or omission of the Trader.

**2. Exclusion of liability for non-performance or inadequate performance etc.**

A term that has the object or effect of inappropriately excluding or limiting the legal rights of the Consumer in relation to the Trader or another party in the event of total or partial non-performance or inadequate performance by the Trader of any of the contractual obligations, including the option of offsetting a debt owed to the Trader against any claim that the Consumer may have against the Trader.

**3. Provision of services dependent on Trader's will alone**

A term that has the object or effect of making an agreement binding on the Consumer in a case where the provision of services by the Trader is subject to a condition whose realisation depends on the Trader's will alone.

**4. Retention of sums paid by Consumer if Consumer decides not to conclude or perform**

A term that has the object or effect of permitting the Trader to retain sums paid by the Consumer if the Consumer decides not to conclude or perform the contract, without providing for the Consumer to receive compensation of an equivalent amount from the Trader if the Trader is the party cancelling the contract.

**5. Disproportionately high sum payable if Consumer decides not to conclude or perform**

A term that has the object or effect of requiring that, if the Consumer decides not to conclude or perform the contract, the Consumer must pay the Trader a disproportionately high sum in compensation or for services that have not been supplied.

**6. 6. Disproportionately high sum payable if Consumer does not fulfil obligations**

A term that has the object or effect of requiring the Consumer to pay a disproportionately high sum in compensation if the Consumer does not fulfil the Consumer's obligations under the contract.

**7. Trader authorised to dissolve contract on discretionary basis or retain sums for unsupplied services**

A term that has the object or effect of authorising the Trader:

- (a) to dissolve the contract on a discretionary basis if the same facility is not granted to the Consumer; or
- (b) to retain sums paid for services not yet supplied by the Trader if the Trader dissolves the contract.

**8. Termination of contract by Trader without reasonable Notice**

A term that has the object or effect of enabling the Trader to terminate a contract of indeterminate duration without reasonable Notice except where there are serious grounds for doing so.



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

Note: See also sections 21 (Financial services: unilateral termination without Notice) and 24 (Sale of Securities, foreign currency etc.) of this Schedule 1-1.

### **9. Automatic extension of contract of fixed duration**

A term that has the object or effect of automatically extending a contract of fixed duration if the Consumer does not indicate otherwise, when the deadline fixed for the Consumer to express a desire not to extend the contract is unreasonably early.

### **10. Terms with which Consumer had no real opportunity of becoming acquainted**

A term that has the object or effect of irrevocably binding the Consumer to terms with which the Consumer has had no real opportunity of becoming acquainted before the conclusion of the contract.

### **11. Unilateral alteration of terms by Trader**

A term that has the object or effect of enabling the Trader to alter the terms of the contract unilaterally without a valid reason specified in the contract.

Note: See also sections 22 (Financial services: unilateral alteration of terms), 23 (Contracts that last indefinitely) and section 24 (Sale of Securities, foreign currency etc.) of this Schedule 1-1.

### **12. Determination of characteristics of contract subject matter by Trader**

A term that has the object or effect of permitting the Trader to determine the characteristics of the subject matter of the contract after the Consumer has become bound by it.

Note: See also section 23 (Contracts that last in definitely) of this Schedule 1-1.

### **13. Unilateral alteration of characteristics of Goods etc. by Trader**

A term that has the object or effect of enabling the Trader to alter unilaterally without a valid reason any characteristics of the Goods, Digital Content or services to be provided.

### **14. Discretion by Trader to decide price**

A term that has the object or effect of giving the Trader the discretion to decide the price payable under the contract after the Consumer has become bound by it, if no price or method of determining the price is agreed when the Consumer becomes bound.

Note: See also sections 23 (Contracts that last indefinitely), 24 Sale of Securities, foreign currency etc.) and 25 (Price-indexation clauses) of this Schedule 1-1.

### **15. Trader permitted to increase price without cancellation rights**

A term that has the object or effect of permitting a Trader to increase the price of Goods, Digital Content or services without giving the Consumer the right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded.

Note: See also sections 23 (Contracts that last indefinitely) and 25 (Price-indexation clauses) of this Schedule 1-1.

### **16. Trader given right to determine whether supply in conformity with contract or exclusive right to interpret contract**

A term that has the object or effect of:



## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

- (a) giving the Trader the right to determine whether the Goods, Digital Content or services supplied are in conformity with the contract; or
- (b) giving the Trader the exclusive right to interpret any term of the contract.

### **17. Limitation of Trader's obligations for agent commitments or making Trader's commitments subject to compliance with formalities**

A term that has the object or effect of limiting the Trader's obligation to respect commitments undertaken by the Trader's agents or making the Trader's commitments subject to compliance with a particular formality.

### **18. Consumer alone required to fulfil obligations**

A term that has the object or effect of obliging the Consumer to fulfil all the Consumer's obligations even though the Trader does not perform the Trader's obligations.

### **19. Unilateral transfer of Trader's rights and obligations under contract**

A term that has the object or effect of allowing the Trader to transfer the Trader's rights and obligations under the contract, if this may reduce the guarantees for the Consumer, without the Consumer's agreement.

### **20. Excluding or hindering Consumer's right to exercise legal remedies**

A term that has the object or effect of excluding or hindering the Consumer's right to take legal Action or exercise any other legal remedy, including, for example, by:

- (a) requiring the Consumer to take disputes exclusively to arbitration not covered by legal provisions; or
- (b) unduly restricting the evidence available to the Consumer; or
- (c) imposing on the Consumer a burden of proof that, according to the applicable law, should lie with another party to the contract.



**PART 2: SCOPE OF PART 1**

**21. Financial services: unilateral termination without notice**

Section 8 (Termination of contract by Trader without reasonable notice) of this Schedule 1-1 does not include a term by which a supplier of financial services reserves the right to terminate unilaterally a contract of indeterminate duration without Notice if there is a valid reason and the supplier is required to inform the Consumer of the cancellation immediately.

**22. Financial services: unilateral alteration of terms**

Section 11 (Unilateral alteration of terms by Trader) does not include a term by which a supplier of financial services reserves the right to alter without Notice the rate of interest payable by or due to the Consumer, or the amount of other charges for financial services, if:

- (a) there is a valid reason; and
- (b) the supplier is required to inform the Consumer of the alteration at the earliest opportunity, and
- (c) the Consumer is free to dissolve the contract immediately.

**23. Contracts that last indefinitely**

Sections 11 (Unilateral alteration of terms by Trader), 12 (Determination of characteristics of contract subject matter by Trader) and 14 (Discretion by Trader to decide price) of this Schedule 1-1 do not include a term under which a Trader reserves the right to alter unilaterally the conditions of a contract of indeterminate duration if:

- (a) the Trader is required to inform the Consumer with reasonable Notice; and
- (b) the Consumer is free to dissolve the contract.

**24. Sale of Securities, foreign currency etc.**

Sections 8 (Termination of contract by Trader without reasonable Notice), 11 (Unilateral alteration of terms by Trader), 14 (Discretion by Trader to decide price) and 15 (Trader permitted to increase price without cancellation rights) of this Schedule 1-1 do not apply to:

- (a) transactions in Securities, financial instruments and other products or services for which the price is linked to fluctuations in a stock exchange quotation or index or a financial market rate that the trader does not control; and
- (b) contracts for the purchase or sale of foreign currency, traveller's cheques or international money orders denominated in foreign currency.

**25. Price-indexation clauses**

Sections 14 (Discretion by Trader to decide price) and 15 (Trader permitted to increase price without cancellation rights) of this Schedule 1-1 do not include a term that is a price-indexation clause, if the clause is otherwise lawful and the method by which prices vary is explicitly described.