



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

**AIFC REGULATIONS No. 6 of 2017**

**December 20, 2017  
Astana, Kazakhstan**



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## AIFC IMPLIED TERMS IN CONTRACTS AND UNFAIR TERMS REGULATIONS

### 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



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- (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**



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- (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



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- (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





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- (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



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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



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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:



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- (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



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(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



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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.



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- (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 terms), 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**

**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.

**39. Scope of Part 4**

- (1) This Part 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 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.



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- (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**

- (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;



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- (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 Part 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
  - (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 Part as excluding or restricting any liability.



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### 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*.

**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.

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

**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.



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**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.

**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.