

GENERAL CONDITIONS PART I
(2010 Edition)

GENERAL CONDITIONS PART I

1. - Definitions

1.1 The terms written with an initial capital letter in these General Conditions Part I are to be understood – unless indicated otherwise – as having the meanings specified in the definitions contained in the Rules of the Supplier.

- **“Annexes”**: shall mean the Rules, Price Lists and Service Manuals, where applicable, attached to the General Conditions Part II;
- **“Client”**: shall mean the person who executes a Contract with the Supplier for the supply of one or more Services;
- **“Contract”**: shall mean the agreement between the Client and the Supplier concerning the supply of the Service(s) indicated in the Request for Services;
- **“Data”**: shall mean the elementary and/or aggregate data entered into or generated by the systems used for the supply of the Service(s) and all the data and information concerning the Service(s) owned by the Supplier;
- **“General Conditions”**: shall mean the General Conditions Part I and Part II;
- **“General Conditions Part I”**: shall mean these general conditions, applicable to all the services supplied by the companies belonging to the Borsa Italiana Group, including the Supplier;
- **“General Conditions Part II”**: shall mean the general conditions applicable to the specific aspects characterising the Services supplied by the Supplier;
- **“Participation Documentation”**: shall mean the documentation, the data and the information the Client is asked to produce to participate in the Service(s);
- **“Parties”**: shall mean the Client and the Supplier;
- **“Rules”**: shall mean the Rules and Instructions of the Supplier that govern the performance and enjoyment of the Service(s) requested;
- **“Request for Services”**: shall mean the draft contract signed by the Client and containing the request for the supply of one or more Services;
- **“Service(s)”**: shall mean, as the case may be, one or more services indicated in the Request for Services and supplied to the Client by the Supplier;
- **“Service Manuals”**: shall mean the technical and operational documentation of the Supplier concerning the Service(s) requested;
- **“Supplier”**: shall mean the company owning the Service to which the Request for Services is sent;
- **“Technological Infrastructure”**: shall mean the hardware and/or network infrastructure and/or software products provided to the Client by the Supplier for the supply of the Service(s).

2. - Object and execution of the Contract

2.1 The object of the Contract, to which the General Conditions and the Annexes shall apply, shall be the supply, against payment of a consideration, of the Service(s) requested by the Client.

2.2 More specifically, the object of the Contract and of the Service(s) shall be established, for each Service, in the General Conditions Part II and the Annexes.

2.3 In the event of conflict and/or incompatibility, including any consequent upon subsequent amendments, the Rules shall prevail over the General Conditions Part II and the latter shall prevail over the General Conditions Part I.

2.4 The General Conditions, including the Annexes, and the Participation Documentation shall always be available on the website of the Supplier.

2.5 The Contract shall be understood to have been executed at the time the Client receives a written communication from the Supplier of the acceptance of the Request for Services containing, *inter alia*, an indication of the day from which the Service will be supplied to the Client. However, from the time the Client receives a written communication from the Supplier with confirmation of receipt of the Request for Services and an invitation to complete the Participation Documentation, dealings between the Client and the Supplier shall be governed by the General Conditions and the Annexes insofar as they are applicable.

2.6 The Client may request, with one or more Requests for Services, the supply of one or more Services. The Request for Services shall result, upon acceptance by the Supplier, in as many separate and independent legal relationships as the Services requested and supplied.

3. – Obligations and performance of the Supplier

3.1 The Service shall be supplied by the Supplier in accordance with the applicable General Conditions, including the Annexes. The obligations of the Supplier shall constitute an obligation of means.

3.2 The Supplier shall perform its obligations with all due care and professional diligence and shall make all the appropriate interventions with regard to its systems to ensure the continuity of the Service.

3.3 If all or part of the performance inherent in the Service is interrupted, suspended, delayed or somehow the subject of anomalies, the Supplier – where possible and after informing the Client if deemed necessary – shall do whatever is necessary to resolve the problems.

3.4 The Client acknowledges and accepts that in order to supply the Service the Supplier may avail itself of third parties, it being understood that the contractual relationship shall be exclusively between the Client and the Supplier.

3.5 For the purposes of the preceding paragraphs the Supplier shall guarantee that it:

- a) is the owner or has valid title to the tangible and intangible goods used to supply the Service and that such goods are free from claims of third parties;
- b) has all the technology, expertise, adequately qualified staff and IT facilities needed and suitable for the supply of the Service;
- c) is the owner of the Service and holds all the related rights;
- d) has all the authorisations needed to supply the Service.

3.6 The Supplier shall limit, suspend or cease the supply of the Service to the Client in the cases provided for in the General Conditions Part II and specified in the Annexes.

4. – Obligations of the Client

4.1 The Client is required to:

- a) comply with all the provisions of the General Conditions from time to time in force including the Annexes, and to keep continuously abreast of what is published on the website of the Supplier pursuant to paragraphs 6.2 and 7.2;
- b) sign the contracts necessary to use the Service in accordance with the rules established by the General Conditions Part II and the Annexes, equip itself, at its own expense, with the hardware, network infrastructure and software necessary to use the Service, establish the indispensable electronic links and guarantee that they are fully operational during the hours the Service is supplied;
- c) use any Technological Infrastructure in accordance with the Annexes to the General Conditions Part II. Accordingly, the Client may not modify, adapt, transfer in any way to third parties, sell, rent, commercialise or exploit in any way or by any means all or part of any Technological

Infrastructure provided or move same from where it was installed or remove any distinctive signs therefrom;

- d) use the basic and applications software of the Service, licensed and/or sublicensed to the Client by the Supplier, the related documentation and, more generally, the Service itself and the Data exclusively for the purposes of the Service;
- e) conserve diligently and use in accordance with the instructions received from the Supplier or contained in the Service Manuals the codes and related passwords of the Service(s) and, where applicable, the optical magnetic support containing the instructions on how to obtain by electronic means the digital certificate needed to use the Service. The Client shall be responsible for their improper use by whomsoever and for any consequences of the unauthorised use of codes, related passwords and, where applicable, digital certificates;
- f) apply promptly to the Supplier, in the manner specified in paragraph 6.4, for the disabling of codes, related passwords and, where applicable, digital certificates if they are lost or stolen or if there are good grounds for fearing that extraneous third parties know the codes, related passwords and, where applicable, digital certificates. Following the Client's report, the Supplier shall disable the lost or stolen codes, related passwords and, where applicable, digital certificates and send the Client new ones;
- g) indicate in the Request for Services the name of the contract representative of the Client as a person in a sufficiently high position, authorised to receive from and submit to the Supplier, in the name and on behalf of the Client, any declaration or instruction provided for in the General Conditions, the Annexes and the Participation Documentation. The replacement of such person shall take effect, unless agreed otherwise by the Parties, from the business day subsequent to that on which the written communication thereof reaches the Supplier or such later date as specified by the Client in the communication;
- h) provide the data and information requested under applicable law, the General Conditions, including the Annexes, and the Participation Documentation in a truthful, complete and accurate way and in the format established by the Supplier;
- i) recognise as its own any communication, order or instruction sent through the Technological Infrastructure through the use of the codes and of the related passwords and, where applicable, digital certificates assigned to it, it being understood that the Client holds Borsa Italiana harmless from any liability in the event of communications or instructions sent in this way, including by unauthorised persons;
- j) inform the Supplier immediately of any total or partial interruption, suspension, delay or malfunctioning in the supply or use of the Service, without prejudice to what is provided for in Article 8;
- k) inform the Supplier promptly, or in any case within the time limits established in the Annexes, of subsequent failure to satisfy the requirements for use of the Service and of any change to the contents of the Request for Services and/or the Participation Documentation;
- l) comply promptly with any request made by the Supplier in the performance of its duties as the manager of the Service thereof concerning data, information or documents to be transmitted to the Supplier.

5. - Confidentiality

5.1 Each of the Parties, acknowledging the confidential nature of the information and documentation pertaining generally to the Services, shall guarantee the other Party, for the duration of this Contract and for one year after the termination or withdrawal due to any reason whatsoever of this Contract, that the information and documentation acquired in relation to the performance of the Contract will be treated confidentially.

5.2 The obligation referred to in the previous paragraph shall not prevent the communication or dissemination by the Supplier in anonymous and aggregate form of such data and information or the communication, after explicit request, to public and judicial authorities.

6. - Communications

6.1 The Supplier shall send the Client communications of a general nature and individual communications in the ways specified in the following paragraphs.

6.2 Communications of a general nature (e.g. Notices) shall be made by means of the website of the Supplier, except in case of malfunctioning or unavailability of the website. In particular, in case of the obligation referred to in paragraph 4.1a) matter communicated by means of such website shall be understood to be known by the Client from the time it is posted on the website and shall become effective on the later date specified in the communication.

6.3 Without prejudice to specific procedures laid down in the Annexes for particular communications, individual communications by the Supplier shall be reduced to writing and sent by registered letter with return receipt, telegram, fax, courier service or any other means permitting documentation of receipt.

6.4 Without prejudice to specific procedures laid down in the Annexes for particular communications, the Client shall reduce its communications to the Supplier to writing and send them by registered letter with return receipt, telegram, fax, courier service or any other means permitting documentation of receipt.

6.5 Communications of an operational nature regarding the ordinary functioning of the Service may also be sent between the Parties electronically unless specified otherwise in the Annexes.

6.6 Individual communications shall be sent by each of the Parties to the other Party to the addresses expressly specified by the Client in the Request for Services and those of an operational nature regarding the ordinary functioning of the Service to the addresses specified in the Participation Documentation.

6.7 Communications referred to in paragraphs 3 and 4 shall be understood to be known by the other Party from the time of their receipt and shall become effective at the time specified in the General Conditions and the Annexes or, in the absence thereof, on the later date specified in the communication.

7. - Amendments of the General Conditions and the Annexes

7.1 The Client acknowledges and accepts that the Supplier may modify or supplement any provision of the General Conditions, including the Annexes, without prejudice to paragraph 11.3.

7.2 The Supplier shall inform the Client of such amendments by posting the text thereof on its website pursuant to paragraph 6.2 at least 15 (fifteen) calendar days before the effective date of the amendments. In such communication the Supplier shall specify the time within which the Client may exercise the right of withdrawal referred to in paragraph 11.3. In no case may such time be less than 10 (ten) calendar days from the date of the communication.

7.3 As a matter of urgency consequent upon measures adopted by the authorities or for duly explained technical or operational reasons that shall be given, the time referred to in paragraph 2 may be reduced by the Supplier to a minimum of 5 (five) calendar days.

7.4 Changes to the Price List, except for those in the Client's favour, shall be communicated in the manner specified in paragraph 2 with advance notice of not less than 30 (thirty) calendar days. The Supplier shall determine and communicate the effective date of changes to the Price List in the Client's favour.

7.5 Notwithstanding the above paragraphs 7.2 and 7.4, the Supplier shall send an e-mail to the Client, to the address provided in the Request for Services, as modified and communicated to the Supplier, containing the notification of the changes on the website. In case of changes to the Rules or Service Manuals, the Supplier shall send the e-mail the same day of the notification of the changes through the website. In case of changes to the General Conditions and/or Price List, the e-mail shall be sent at least 1 (one) day before the notification of the changes through the website.

7.6 In the cases referred to in the preceding paragraphs the Client may exercise the right of withdrawal from the Contract within the time and in the manner and with the effects specified in Article 11, paragraphs 3, 4 and 5.

7.7 Additions to the General Conditions concerning the introduction and supply of new non-mandatory services shall not constitute amendments pursuant to and for the purposes of this article.

8. - Liability

8.1 The liability of the Supplier shall exist, for any claim deriving from this Contract, only for losses that are the immediate and direct consequence of wilful misconduct or gross negligence on the part of the Supplier.

8.2 The Client must send the Supplier a report within 10 (ten) calendar days, under penalty of foreclosure, from the day on which it became aware, or should have become aware using due diligence of the occurrence of a loss-producing event it deems should be indemnified by the Supplier. Failure to respect such time limit shall entail lapse of the Client's rights in this regard. The report shall contain a precise indication of the time at which the loss-producing event occurred, the circumstances under which it occurred and an assessment of the loss produced. The related supporting documentation, including in relation to the size of the loss incurred and consequent claim, must be received by the Supplier within 20 (twenty) calendar days of the expiration of the time limit referred to above.

8.3 Without prejudice to any liability that the Supplier may have to the Client, the Client shall hereby hold harmless the Supplier, in the event of claims for damages consequent upon actions by third parties, including other Clients, from any claim made in relation to deeds or actions inherent in the performance of the Contract and shall authorise the Supplier to file a third-party claim against it pursuant to Article 106 of the Italian Code of Civil Procedure.

8.4 The Parties agree that no liability shall exist for non-performance of obligations deriving from the Contract if such non-performance is due to events beyond the control of the non-performing Party, including, but not limited to those caused by:

- a) wars, rebellions, terrorist attacks, earthquakes, floods, fires or other causes of force majeure;
- b) national or local strikes (including at company level);
- c) electrical outages or interruptions and/or malfunctioning of electronic data carrier services due to faults in data transmission lines provided by persons other than the Supplier or provided by third parties referred to in paragraph 3.4;
- d) impediments or obstacles caused by legislative or administrative measures or judicial acts.

8.5 The Supplier is required to give effect to all the instructions issued by the authorities and/or by other persons they have authorised. This may lead to temporary suspensions and delays in the performance of the obligations of the Supplier or in their performance in special ways; the Client shall nonetheless be required to perform the obligations deriving from the Contract and pay the sums due to the Supplier.

9. – Intellectual and/or industrial property rights

9.1 The Service and the related Data made available under licenses or sublicenses by the Supplier shall be used by the Client in compliance with the intellectual and/or industrial property rights of such Company and/or third parties as detailed in the General Conditions Part II.

10. – Fees

10.1 For the supply of the Service the Client shall pay the Supplier the fees set out in the Price List attached to the General Conditions Part II in the amounts, within the time and in the manner specified therein.

10.2 Without prejudice to Article 12, if the Client fails to pay the fees due within the prescribed time, default interest shall be charged automatically on the amount in question without the need for a written notification at the highest three-month Euribor observed in the period the payment is overdue plus two percentage points.

10.3 Without prejudice to the right to file a separate action for money had and received, the Client may not raise any objections, even in the event of interruptions or suspensions in the supply of the Service, aimed at avoiding or delaying payment of the fees due.

10.4 The Client shall remain committed to paying any penalties applied in accordance with the Rules or the General Conditions Part II. The payment of penalties shall not preclude the possibility for the Supplier to demand strict performance and/or recover damages for any greater loss actually suffered.

11. – Duration of the Contract and withdrawal

11.1 This Contract shall be for an indefinite term.

11.2 The Client shall have the right to withdraw from the Contract at any time by sending a communication, pursuant to paragraph 6.4, indicating the effective date of withdrawal; the communication must arrive at least 30 (thirty) calendar days before such date. Withdrawal shall not exonerate the Client, even in part, from the requirement to perform all the obligations entered into under the Contract or even indirectly deriving from enjoyment of the Service.

11.3 By way of derogation from paragraph 2, in case of amendments referred to in paragraph 7, the Client may exercise the right of withdrawal from the Contract in the manner specified in paragraph 2 by giving the Supplier the relevant communication within the time established by the Supplier in the communication containing the text of the amendments referred to in paragraph 7.2. In case of amendments made pursuant to paragraph 7.3, the advance notice of withdrawal may be communicated up to 1 p.m. on the trading day for the Supplier preceding the effective date of the amendment.

11.4 In all the cases of withdrawal referred to in paragraph 3 – provided the withdrawal becomes effective before the application of the amendments it is based on – the contractual conditions previously in force shall apply to the Client.

11.5 If the withdrawal communication arrives after the expiration of the time limits specified in the preceding paragraphs, the withdrawal shall not take effect unless the Supplier waives the time limit established in its favour. The General Conditions Part II may specify cases in which withdrawal shall not take effect at the time indicated in the withdrawal communication.

11.6 The Supplier may exercise the right of withdrawal, giving adequate advance notice, within the time limits and in the manner referred to in paragraph 6.2, only *erga omnes* and in cases of radical transformation of the Service, including as a consequence of measures adopted by the competent authorities or in case of termination of operation of the Service. In cases of withdrawal pursuant to this paragraph, the Supplier shall not be required to pay any penalty or indemnity or make any reimbursement.

12. - Express termination clause

12.1 The Contract shall be understood to be terminated *de jure*, as provided for in Article 1456 of the Italian Civil Code, in the following cases:

- a) in the event of failure to pay fees within the prescribed time limits for more than 90 (ninety) calendar days;
- b) in cases of exclusion from the Service provided for in the Rules or the General Conditions Part II;
- c) in the case in which the performance of the Service ceases as a consequence of legislative or administrative measures.

13. - General provisions

13.1 The Contract and the General Conditions, including the Annexes, shall constitute the totality of the terms and conditions governing the Service and shall cancel and replace any earlier agreement and any oral or written communication made prior to the execution of the Contract.

13.2 The Contract and/or the rights and obligations deriving therefrom may not be transferred by the Parties to third parties. The Client shall hereby authorise the Supplier to transfer the Contract and/or the rights and obligations deriving therefrom in the event of the merger or acquisition of the Supplier with another company or the transfer of the business unit in question. In such cases the Supplier shall give the Client adequate advance notice.

13.3 In the event of the merger or acquisition of the Client with another company or the transfer of the business unit which the Service refers to, the Client undertakes to give the Supplier at least 30 (thirty) calendar days advance notice of the effective date of the merger, acquisition or transfer for the purposes of the Contract. The Client shall remain liable – and likewise the acquiring company, the company resulting from the merger or the transferee – for any delay in giving such advance notice to the Supplier, including the case in which such delay leads to the Supplier having to suspend the Client, the acquiring company, the company resulting from the merger or the transferee as the case may be for the time needed for the performance of the tasks for which it is competent.

13.4 The omitted or late exercise of one or more of the rights pertaining to a Party under the Contract may not be understood to mean the Party in question has renounced the exercise of such rights.

13.5 The version in the English language available on the web site of the Request for Services and the General Conditions, including the Annexes, are translations of the version in the Italian language. It is agreed that in the event of a discrepancy between the two versions, the version in the Italian language shall prevail.

14. - Disputes and compulsory arbitration

14.1 The Client and the Supplier shall attempt to resolve any problems that arise between them consequent upon the Contract through formal notices and bilateral meetings to find possible solutions.

14.2 Disputes concerning fees and penalties referred to in Article 10 shall be settled by the Italian courts, with the Court of Milan enjoying exclusive jurisdiction in this regard.

14.3 Any dispute other than those referred to in paragraph 2 that concerns or derives directly or indirectly from the Contract (including claims for damages) shall first be referred to an Appeals Board.

14.4 The Appeals Board referred to in paragraph 3 shall be made up of three members appointed by the Board of Directors of the Supplier, which shall also appoint one of the members to be the chairman. The seat of the Appeals Board shall be at the Supplier. All the members of the Appeals Board shall be chosen from among independent persons of proven expertise in matters concerning financial markets. The appointment shall be for three years and be renewed once. Where one of the members vacates the position before the expiry of the term of his appointment, the Board of Directors of the Supplier shall appoint a substitute; such appointment shall be for a term equal to the remainder of the term of office of the other members of the Appeals Board.

14.5 The Appeals Board shall render a reasoned opinion in accordance with law within 30 (thirty) days of the date the dispute was referred to it subject to affording the Parties an opportunity to state their cases in the meantime. The chairman of the Appeals Board may, in agreement with the other members of the Board, entrust the examination of the question to a single member of the Board. The proceedings shall be conducted in the Italian language.

14.6 The opinion of the Appeals Board shall be notified promptly to the Parties in writing. It shall not be binding on the Parties and where one of the latter initiates arbitration pursuant to paragraph 7, it shall not be binding on the arbitrators appointed, who shall have the broadest prerogatives and powers to re-examine the entire dispute without any preclusion.

14.7 Any disputes between the Supplier and the Client concerning and/or consequent upon the Contract that have not been settled by the Parties accepting the opinions of the Appeals Board referred to in the preceding paragraphs shall be submitted to an Board of Arbitration made up of three members. The Party requesting arbitration shall send the other Party, in the manner provided for in the first paragraph of Article 810 of the Italian Code of Civil Procedure, a document containing the declaration of its intention to begin arbitral proceedings, with an indication of the disputed matter and the name of its arbitrator. Within 20 (twenty) days of such notification the other Party must designate the second arbitrator in the same manner; in the event of its failing to do so, the second paragraph of Article 810 of the Italian Code

of Civil Procedure shall apply. Within 20 (twenty) days of the notification to the Party requesting arbitration of the document containing the designation of the second arbitrator, the arbitrators so designated – each duly informed by the Party that designated him/her – shall proceed by mutual consent to appoint the third arbitrator, who shall act as chairman. In the event of delay and/or failure to agree within the time referred to above, either of the Parties may apply to the President of the Court of Milan to designate the second arbitrator and/or the third arbitrator. Arbitrators shall be substituted in the same way as they are appointed. The proceedings before the Board of Arbitration must begin, under condition to become null and void, within 30 (thirty) days of receipt of the notification referred to in paragraph 6.

14.8 The seat of the Board of Arbitration shall be in Milan at the place established by its chairman. The Board of Arbitration may nonetheless hold its meetings in the place it establishes in the Italian Republic. It is ritual and it shall decide in accordance with Italian law. The arbitrators must render their award within 90 (ninety) days of the acceptance by the chairman of the Board of his/her appointment; this time may be extended for not more than 90 (ninety) days only where the Board of Arbitration considers expert evidence needs to be obtained. The award shall also determine and allocate the arbitration costs and the arbitrators' fees. The arbitration proceedings shall be conducted in the Italian language.

14.9 It is agreed that the parties may apply for the award to be filed and executed in accordance with the Italian Code of Civil Procedure. The Parties agree that the award will be appealable on ground of incorrect application of law pursuant to Article 829, paragraph 3, of the Italian Code of Civil Procedure.

14.10 For matters not expressly provided for in this article, the rules laid down in Article 806 *et seq.* of the Italian Code of Civil Procedure shall apply.

15. – Applicable law and jurisdiction

15.1 Without prejudice to Article 14, the Client and the Supplier accept the jurisdiction of the Court of Milan for any question or act that must be submitted to the courts of law and Italian law as the law governing the Contract, including, but not limited to, any matter regarding the form, the interpretation and the requirements for the validity of the agreement, the obligations deriving thereunder (including those for damages) and their performance.

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