

General Terms and Conditions

Description

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QS GENERAL TERMS AND CONDITIONS

APPLICABLE TO ALL ORDERS

1. Interpretation

The definitions in this clause apply in these General Terms and Conditions. Terms defined in the General Agreement between QS and the Customer apply in these General Terms

Agreement: the General Agreement between QS and the Customer.

“Business Day” – any day except any Saturday, any Sunday or any day which is a national or federal holiday in the territory where the Customer is located.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or is information which would usually be expected to be kept confidential including information concerning the business, assets, affairs, customers, clients or suppliers of a party.

Customer: as designated within the Order

Fees: the Fees payable by the Customer to QS for the Services as specified in the Order

Intellectual Property Rights: patents, trademarks, copyright, design rights, database rights, domain names, (in each case whether registered or not), and anything related thereto or similar from time to time.

Order: an agreement for the provision of Services by QS or QS Affiliate to the Customer agreed in accordance with the Agreement

QS: the QS company designated in the Order

Services: the services provided by QS to the Customer pursuant to an Order

2. QS's Obligations

2.1 QS undertakes that the Services will be performed with reasonable skill and care.

2.2 The undertaking at clause 2.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to QS's instructions, or modification or alteration of the Services by any party other than QS or QS's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, QS will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 2.1.

2.3 QS shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

2.4 Nothing within these terms and conditions shall prevent QS from entering into similar agreements with third parties, or from independently developing, using, selling or licensing, products and/or services which are similar to the Services provided to the Customer.

2.5 QS warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement and any Order.

3. Customer's Obligations

3.1 The Customer shall:

(a) provide QS with:

(i) all necessary co-operation in relation to the Agreement and any Order; and

(ii) all necessary access to such information as may be required by QS in order to provide the Services;

(b) without affecting its other obligations under these terms and conditions, comply with all applicable laws and regulations with respect to its activities under the Agreement and any Order;

(c) carry out all other Customer responsibilities set out in the Agreement and any Order in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, QS may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d) obtain and shall maintain all necessary licences, consents, and permissions necessary for QS, its contractors and agents to perform their obligations under the Agreement and any Order, including without limitation the Services;

4. Charges and Payment

4.1 The Customer shall pay the Fees to QS for the Services in accordance with this clause 4 and the Order.

4.2 The Customer shall on the Commencement Date provide to QS approved purchase order information acceptable to QS and any other relevant valid, up-to-date and complete contact and billing details. Should Customer require QS to re-issue any invoice due to the Customer providing incorrect or

incomplete contact and/or billing details then QS shall charge an administration fee of £100 GBP (one hundred pounds sterling) or the equivalent amount in the currency specified in the Order at the then current FX rate.

4.3 QS shall invoice the Customer on the dates specified in the Order and the Customer shall pay each invoice within 30 days after the date of such invoice. If QS has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of QS interest shall accrue on a monthly basis on such due amounts at an annual rate equal to 4% over the then current interest rate of Bank of England from time to time, commencing on the due date and continuing until fully paid.

4.4 QS may, without prejudice to, and in addition to any other remedy it may have, at any time after a payment has become overdue (and after sending written notice), temporarily suspend the Customer's right to use the Services until such time as payment is made in full.

4.5 All amounts and fees stated or referred to in the Order:

(a) shall be payable in the currency specified in the Order, or where no currency is specified, in pounds sterling;

(b) are non-cancellable and non-refundable;

(c) are exclusive of value added tax or general sales tax, which shall be shown in the Order as a separate item or, where not shown in the Order, shall be added to QS's invoice(s) at the appropriate rate.

(d) Customer shall make all payments without withholding or deduction of, or in respect of, any tax, levy, duty, charge or fee unless required by law. If any such withholding or deduction is required, Customer shall pay to QS such additional amount as will ensure that QS receives the same total amount that it would have received if no such withholding or deduction had been required.

5. Data Protection

Both Parties agree to comply with any applicable privacy and data protection laws.

6. Intellectual Property Rights

6.1 The Customer acknowledges and agrees that QS and/or its licensors own all Intellectual Property Rights in the Services, other than Intellectual Property Rights in any materials provided to QS by the Customer as part of the Services. Except as expressly stated herein, the Agreement and any Order does not grant the Customer any rights to, under or in, Intellectual Property Rights, or any other rights or licences in respect of the Services.

6.2 QS confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Agreement and any Order.

7. Confidentiality

7.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement and any Order. A party's Confidential Information shall not be

deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

7.2 Each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement and any Order.

7.3 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 7.3, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

7.4 No party shall make, or permit any person to make, any public announcement concerning the Agreement and any Order without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

7.5 The above provisions of this clause 7 shall survive termination of the Agreement and any Order, however arising.

8. Indemnity

8.1 The Customer shall defend, indemnify and hold harmless QS against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Services, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) QS provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

8.2 QS shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services in accordance with any Order infringes any patent effective as of the commencement date of the Order, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) QS is given prompt notice of any such claim;
- (b) the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to QS in the defence and settlement of such claim, at QS's expense; and
- (c) QS is given sole authority to defend or settle the claim.

8.3 In the defence or settlement of any claim, QS may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Order on 2 Business Days' notice to the Customer without any additional liability or obligation to the Customer.

8.4 In no event shall QS, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services by anyone other than QS; or
- (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by QS; or
- (c) the Customer's use of the Services after notice of the alleged or actual infringement from QS or any appropriate authority.

8.5 The foregoing states the Customer's sole and exclusive rights and remedies, and QS's (including QS's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

9. Limitation of Liability

9.1 Except as expressly and specifically provided in the Agreement and any Order:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. QS shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to QS by the Customer in connection with the Services, or any actions taken by QS at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement and any Order; and

(c) the Services are provided to the Customer on an “as is” basis.

9.2 Nothing in the Agreement or any Order excludes the liability of QS:

(a) for death or personal injury caused by QS’s negligence; or

(b) for fraud or fraudulent misrepresentation.

9.3 Subject to clause 9.1 and clause 9.2:

(a) QS shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Agreement or any Order; and

(b) QS’s total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement or any Order shall be limited to the total Fees paid for the particular Services which gave rise to the claim during the 12 months immediately preceding the date on which the claim arose.

9.4 Nothing in the Agreement or any Order excludes the liability of the Customer for any breach, infringement or misappropriation of QS’s Intellectual Property Rights.

10. Termination

10.1 Without affecting any other right or remedy available to it, either party may terminate any Order with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Order and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so. For the avoidance of doubt, non-payment of any Fees will constitute a material breach; or

(b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order, or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator, or notice of intention to appoint an administrator is given or a receiver or administrative receiver is appointed over any of the other party’s assets or undertakings, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver, or if any other person takes possession of or sells the other party’s assets, or the other party makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way or, being an individual, a bankruptcy order is made against them, or it enters into any compromise or arrangement with its creditors, or any event occurs in a foreign jurisdiction analogous to, or comparable with, any of the above.

11. Survival

11.1 The termination of any Order shall not affect any other Orders or the Agreement.

11.2 Termination of any Order shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of the agreement which existed at or before the date of termination.

12. Force Majeure

12.1 QS shall have no liability to the Customer under any Order if it is prevented from or delayed in performing its obligations under the Order, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of QS or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, epidemic, pandemic, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, natural disaster, flood, storm or default of QS sub-contractors, provided that the Customer is notified of such an event and its expected duration.

13. Variation

13.1 No variation of the Agreement or any Order shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14. Business Ethics

14.1 Customer agrees:

(a) not to offer or give to any person employed by or on behalf of QS any gift or consideration of any kind as an inducement or reward for any act in relation to the performance of the Services: and

(b) to comply with all applicable laws, statutes and regulations relating to its undertakings under this Agreement including in relation to anti-slavery and human trafficking, anti-bribery and anticorruption; and

(c) and understands that QS is required to comply with the requirements of UK anti-slavery, antibribery and anti-corruption laws (including the Bribery Act 2010 and the Modern Slavery Act 2015) and Customer will not act in any manner which may cause QS to be in breach of its obligations under those laws; and

(d) and understands that QS is committed to having a work environment where everyone is treated with dignity and respect. QS does not tolerate bullying, harassment, intimidation and/or victimisation of its staff, visitors and guests. Customer shall, and shall procure that its personnel also shall, act in accordance with this clause; and

(e) to have and maintain in place throughout the term of this Agreement its own policies and procedures to ensure compliance with the 14(b) and will enforce them where appropriate; and

(f) to promptly report to QS any request or demand for any undue financial or other advantage of any kind received by Customer in connection with the Services or the performance of this Agreement; and

(g) to notify QS as soon as it becomes aware of actual or suspected slavery or human trafficking in a supply chain which has a connection with the Agreement; and

(h) Any breach of this condition 14 by Customer (or by anyone employed by or acting on their behalf) will entitle QS to terminate this agreement without penalty and with immediate effect.

15. Waiver

15.1 No failure or delay by a party to exercise any right or remedy provided under the Agreement or any Order or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. Rights and Remedies

16.1 Except as expressly provided in the Agreement or any Order, the rights and remedies provided under the Agreement or any Order are in addition to, and not exclusive of, any rights or remedies provided by law.

17. Severance

17.1 If any provision or part-provision of the Agreement and any Order is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement and any Order.

18. Entire Agreement

18.1 The Order constitutes the entire agreement between the parties in relation to the Services and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each party acknowledges that in entering into the Order it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement and any Order.

19. Assignment

19.1 The Customer shall not, without the prior written consent of QS, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement and any Order.

20. No Partnership or Agency

20.1 Nothing in the Agreement or any Order is intended to or shall operate to create a partnership

between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. Third Party Rights

21.1 The Agreement and any Order does not confer any rights on any person or party (other than the parties to the Agreement and any Order and, if applicable, their successors and permitted assigns).

22. Counterparts

22.1 Any Order may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

22.2 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

23. Notices

23.1 Any notice required to be given under any Order shall be in writing and shall be delivered by email, by hand or sent by pre-paid recorded delivery post or courier to the other party at its address (or email address) set out in the Order, or such other address (or email address) as may have been notified by that party for such purposes.

23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid recorded delivery post or courier shall be deemed to have been received at the time specified on the delivery notice. If any notice is served by e-mail then it shall only be deemed to have been served upon confirmation of receipt by the recipient's e-mail server.

24. Governing Language

24.1 If the Agreement or any Order is translated into one or more different languages then in the case of ambiguity, inconsistency or conflict between the different translated versions, the English language version shall prevail.

25. Governing Law

25.1 The Order and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

26. Jurisdiction

26.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with any Order or its subject matter or formation (including non-contractual disputes or claims).

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