

QCM (UK) LLP General Terms and Conditions of Supply

1 Interpretation

1.1 In these General Terms and Conditions of Supply the following expressions have the following meanings unless inconsistent with the context:

"**Conditions**" these general terms and conditions of supply together with any Special Conditions;

"**Company**" QCM (UK) LLP, Electra Way, Crewe Business Park. Crewe Cheshire. CW1 6GL;

"**Contract**" a contract for the supply of Services as set out in these Conditions and the applicable Proposal;

"**Customer**" the person, company, partnership or undertaking named as such in a Contract;

"**Deliverables**" the products of the provision of the Services to be delivered to the Customer;

"**Intellectual Property Rights**" all rights in the nature of patents, designs, copyright, trade marks, utility models, drawings, concepts, ideas and all other rights of a similar nature (whether registered or unregistered and whether capable of registration or not);

"**Price**" the price of the Services as detailed in the relevant Proposal or, in the absence of such detail, as set out in the Price List;

"**Price List**" the Company's price list for the provision of Services as amended from time to time;

"**Proposal**" a proposal for the provision of Services prepared by the Company and signed by the Customer;

"**Preparatory Work**" any work carried out by the Company for the Customer prior to the agreement (if any) of a Proposal;

"**Services**" means the work and services performed or to be performed by the Company for a Customer as detailed in the relevant Proposal together with any Preparatory Work; and

"**Special Conditions**" any conditions set out in the Proposal.

1.2 Where any consent is required to be given by the Company or where any discretion may be exercised by the Company pursuant to a Contract then such consent may be withheld and such discretion may be exercised at the absolute discretion of the Company.

1.3 In the Conditions:

1.3.1 the use of the plural shall include the singular and vice versa;

1.3.2 references to the masculine, feminine or neuter genders shall include each and every gender;

1.3.3 headings used are for reference purposes only and shall not be taken into account in the construction of the Conditions; and

1.3.4 reference to a clause is to a clause of the Conditions.

2 Basis of the Provision of Services

2.1 All Preparatory Work carried out by the Company and all proposals (including the Proposal) are issued by the Company and are accepted by the Customer and all Contracts are entered into by the Company on the basis of the Conditions to the exclusion of all other terms and conditions, whether oral or in writing.

2.2 Unless previously withdrawn, proposals are open for acceptance within 30 (thirty) days of the date of issue. The Company reserves the right to make changes to a proposal at any time prior to its acceptance by the Customer.

- 2.3 Any indication by the Company as to the number of man days or man hours required by the Company to perform Services, any date given for the provision of the Services and/or any date given for the delivery of the Deliverables shall be an estimate only and shall not be binding upon the Company. The Company shall in no circumstances be liable for any expense or loss incurred by the Customer where such estimate or indication is incorrect.
- 2.4 If the Company indicates a maximum number of man days or man hours for the provision of the Services the Company shall, save as provided below, be entitled to levy an additional charge (based upon the Company's Price List) for any man days or man hours required by the Company to provide the Services in excess of such maximum. Such additional charge shall not be made in respect of additional man-days or man-hours required due to the Company's default.
- 2.5 Where the Company indicates that the Services are to be performed by named personnel then the Company may at its discretion perform the Services using such other personnel, as the Company considers appropriate.

3 Supply of Services

- 3.1 The Company shall, save as provided in clause 3.2, provide the Services detailed in the Proposal upon the terms and conditions set out in the Contract and in consideration of the payment of the Price by the Customer.
- 3.2 Preparatory Work is carried out by the Company subject to these Conditions.
- 3.3 Each Contract shall be a separate contract and neither party's default under one Contract shall, save as expressly provided in the Conditions, entitle the other to a remedy under any other Contract.

4 Price

- 4.1 Unless agreed otherwise in writing the Price is exclusive of VAT any other applicable taxes and/or duties and/or the costs of travel, accommodation and subsistence incurred by the Company in its performance of the Services which shall be payable by the Customer in addition to the Price.
- 4.2 The Company shall be entitled to increase the Price to take account of:
- 4.2.1 any interruptions or delays in the provision of the Services caused by or due to the acts and/or omissions of the Customer;
 - 4.2.2 any variation or modification to the Services or to the Proposal made upon the request of the Customer or as a result of unforeseen complications and/or circumstances;
 - 4.2.3 any increase in the Company's costs in providing the Services including but not limited to the cost of materials; and/or
 - 4.2.4 any change of any law, regulation or other enactment affecting the provision of the Services.
- 4.3 The Company shall, save as provided in clause 4.4 and/or in any Special Conditions, be entitled to invoice the Customer for the Price upon the date of delivery of the Deliverables. Unless agreed otherwise in writing the Company's invoice shall become due upon the date of issue. Time of payment shall be of the essence. All payments shall be made in pounds sterling.
- 4.4 The Company may, if the provision of the Services is delayed for a period of time equal to more than 20% of the total anticipated time frame for the provision of the Services as a result of the acts and/or omissions of the Customer, issue the Customer with an interim invoice in respect of the Services to carried to date calculated on a pro-rated basis.
- 4.5 If the Customer fails to pay any monies on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to charge the Customer interest calculated on a daily basis (before as well as after any judgment) on the outstanding monies at the rate of 4% (four per cent) per calendar year or part thereof above the base lending rate of the Barclays Bank Plc from time to time until payment is received.
- 4.6 The Customer may not cancel any Contract without the prior written consent of the Company. If given, the Company's consent shall, unless otherwise agreed in writing, be deemed to be on the express condition that the Customer shall indemnify the Company against all loss, damage, claims or actions arising out of such cancellation.

5 **Supply of Information and Assistance to the Company**

- 5.1 The Customer shall, whenever requested by the Company, promptly provide the Company with all information and assistance reasonably required by the Company in its provision of the Services including, but not limited to, that set out in the Proposal.
- 5.2 The Company shall be entitled to increase the Price to take account of any additional costs suffered or incurred by the Company as the result of a failure by the Customer to provide information and/or assistance in accordance with clause 5.1 above.

6 **Intellectual Property Ownership**

- 6.1 Upon payment of the Price under the relevant Contract the Intellectual Property Rights in the Deliverables shall, save to the extent that they are owned by third parties or come within the ambit of clause 6.2 below, vest in and remain the property of the Customer.
- 6.2 The Intellectual Property Rights in any and all specifications, drawings, designs, concepts, ideas, proposals (including the Proposal), strategies, plans, descriptions and documentation submitted by the Company to the Customer shall, save as provided below, remain the property of the Company and the Customer shall not use, copy or reproduce the same.
- 6.3 To the extent that any of the specifications, drawings, designs, concepts, ideas, proposals (including the Proposal), strategies, plans descriptions and documentation belonging to the Company under clause 6.2 above are incorporated in the Deliverables the Company hereby grants to the Customer a perpetual, royalty free, non-exclusive licence to use the same solely as part of the Deliverables.
- 6.4 The Company reserves the right to re-use all or part of any specifications, drawings, designs, concepts, ideas, proposals (including the Proposal), strategies, plans, designs and documentation provided by it to the Customer but agrees that, in doing so, it will not copy or reproduce the Deliverables or use any other Intellectual Property Rights or information proprietary to the Customer.
- 6.5 If any software (including without limitation any bespoke software) is provided to a Customer by the Company under the Intellectual Property Rights in the same shall remain the property of the Company and the Customer shall use the same only as authorised by the Company and in conjunction with the rest of the Deliverables provided under the Contract.

7 **Indemnity**

- 7.1 The Customer shall indemnify and hold the Company harmless against any loss, damage, cost or expense suffered or incurred by the Company as a result of any claim alleging that the Company's use of information and/or materials provided to it by the Customer infringes the Intellectual Property Rights of any third party.

8 **Rejection of Deliverables**

- 8.1 The Customer shall inspect and test the Deliverables immediately on receipt to ensure that they conform with the applicable Proposal and shall immediately by telephone and then in writing within 48 (forty-eight) hours (weekends and bank holidays excluded) give notice to the Company in detail of any ground on which the Customer alleges that the Deliverables are not in accordance with the relevant Proposal. If the Customer fails to give such notice the Goods shall be conclusively deemed to be in all respects in accordance with the relevant Proposal and the Customer shall be deemed to have accepted the Deliverables accordingly. In the event that the Customer establishes to the Company's reasonable satisfaction that the Deliverables are not in accordance with the relevant Proposal, the Customer's sole remedy in respect of such defects shall be limited as the Company may elect to the replacement of the Deliverables or refund of the Price against return of the Deliverables within a reasonable time.
- 8.2 The Company shall not be liable for failure to meet any requirements not expressly indicated in the relevant Proposal.

9 **Warranties and Liability**

- 9.1 The Company's prices are determined on the basis of the following warranties, limitations and exclusions of liability. The Customer expressly agrees that these warranties, limitations and exclusions are reasonable.

- 9.2 The provisions of this clause 9 (and the above clause 8) set out the Company's entire liability to the Customer (including any liability for the acts and omissions of its employees, agents or sub-contractors) in respect of:
- 9.2.1 any breach of contractual obligations for which the Company is liable,
 - 9.2.2 any tortious act or omission (including negligence) for which the Company is liable; and
 - 9.2.3 any action arising out of misrepresentation (save in the case of fraudulent misrepresentation);
- 9.3 The Company warrants that it will provide the Services with reasonable skill and care.
- 9.4 All conditions and warranties that are or may be implied by statute or common law or otherwise into the Conditions and/or any Contract are hereby excluded to the fullest extent permitted by law.
- 9.5 The Company's total aggregate liability for all claims arising out of any Contract shall not in any event exceed the Price in relation to that Contract.
- 9.6 The Company shall in no circumstances be liable to the Customer for any loss of profits, anticipated savings, goodwill or business opportunity or for any injury to reputation, loss of data or losses suffered by third parties or for any indirect, consequential or special loss or damage regardless of the form of action, whether in contract, strict liability or tort (including negligence) and regardless of whether the Company knew or had reason to know of the possibility of the loss, injury or damage in question.
- 9.7 Nothing in these Conditions or in any Contract shall limit the Company's liability to the Customer for:
- 9.7.1 death or personal injury caused by the negligence of the Company its employees, agents or sub-contractors; or
 - 9.7.2 fraudulent misrepresentation; or
 - 9.7.3 any other loss or damage the exclusion or limitation of which is not permitted by law
- 9.8 Any limitations or exclusions from liability of a third party supplier used by the Company will apply except as otherwise specified in these Terms & Conditions and the Contract.
- 9.9 Nothing in this clause 9 shall confer any right or remedy upon the Customer to which it would not otherwise be entitled. The provisions of this clause 9 shall survive any termination of the whole or any part of a Contract.

10 Confidentiality

- 10.1 The Customer shall and, shall procure that its employees, agents, officers and other representatives shall keep confidential and not use for any purpose not connected with the Contract any and all proposals issued by the Company (including the Proposal) and any and all information relating to the Company and the Company's business which it obtains under, as a result of or in connection with the Contract.
- 10.2 The provisions of clause 10.1 shall not apply to information that:
- 10.2.1 is in, or which comes into, the public domain otherwise than by reason of a breach of the Contract or of any other duty of confidentiality relating to that information; or
 - 10.2.2 is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
 - 10.2.3 is lawfully in the possession of the other party before the date of the Contract and in respect of which that party is not under an existing obligation of confidentiality;
 - 10.2.4 the Customer is obliged to disclose by any applicable law or by a court, tribunal or regulatory body acting in the course of proceedings before it (but then only to the extent required).
- 10.3 The provisions of this clause 10 shall survive any termination of the Contract.

11 Force Majeure

- 11.1 Any delay in or failure of performance of any obligation by either party (save an obligation in respect of the payment of monies) shall not constitute a breach of such obligation to the extent that such delay or failure is caused by an event (including without limitation an event such as an act of God, explosion, vandalism, fire, flood, strike, lock-out or other industrial action or trade dispute) outside the control of that party and which that party is not reasonably able to prevent or to circumvent.

12 **Termination**

- 12.1 An "Event of Default" shall occur if:
- 12.1.1 the Customer fails to pay the Price or any other sums due on the due date;
 - 12.1.2 the Customer commits a remediable breach of Contract, persistently repeats a remediable breach or commits any remediable breach and fails to remedy it within 30 days of receipt of notice of the breach requiring remedy of the same;
 - 12.1.3 the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or becomes the subject of any distraint, execution or similar process, or has a receiver, administrative receiver or manager appointed over its undertaking or assets or if a petition is presented against it for the appointment of an administrator or liquidator or if it passes a resolution for its own winding up or enters into any composition or arrangement with its creditors or if a similar event to any of the foregoing occurs under the laws of the country in which the Customer is established; or
 - 12.1.4 the Customer ceases or threatens to cease to carry on its business or any part of its business.
- 12.2 Following any such Event of Default the Company may at its absolute discretion (without incurring any liability therefore) either elect to
- 12.2.1 terminate the Contract in relation to which the Event of Default occurred and/or any other Contract that it has with the Customer with immediate effect by giving the Customer notice so to do; or
 - 12.2.2 suspend its performance of the Contract or of any other Contract that it has with the Customer or of any part of such Contract(s) and/or require payment in advance or satisfactory security for further performance under such Contract(s) and exercise any of its rights to recover the Deliverables delivered or any of them.
- 12.3 Upon any termination under clause 12.2 the Company shall be entitled to
- 12.3.1 payment for the Deliverables and/or Services on a time and materials basis (which shall include, but not be limited to, the costs of any third party contracts) and to retain any Deliverables pending payment in full therefore; and
 - 12.3.2 have returned to it immediately all Deliverables, specifications, drawings, designs, concepts, ideas, proposals (including the Proposal) descriptions and documentation provided by the Company to the Customer except those Deliverables in respect of which the Company has received payment of the Price.
- 12.4 The Customer may terminate any Contract at any time upon written notice of 2 months provided that the Customer shall indemnify and hold the Company harmless against all costs, expenses, and liabilities suffered or incurred by the Company in relation to the Contract on or prior to the date of termination.
- 12.5 Termination of any Contract shall be without prejudice to the accrued rights and remedies of the parties under that or any other Contract.

13 **General**

- 13.1 If any provision or any part of any provision in any Contract is determined by any court, tribunal or administrative body of a competent jurisdiction to be wholly or partly unenforceable for any reason that enforceability shall not affect the rest of the Contract and/or these Conditions and the unenforceable part shall be deemed severed and deleted.
- 13.2 Any notice or other document to be served under any Contract shall be in writing and service may be effected and shall be deemed to have been made as follows:
- 13.2.1 by pre-paid first class post, on the fourth day after posting in the case of first class air mail post and on the second day after posting in other cases;
 - 13.2.2 by personal delivery, upon actual delivery; and
 - 13.2.3 by facsimile, twelve (12) hours after the time of transmission provided that within 24 hours of transmission a copy of the facsimile is sent by first class post.

Any notice or other document to be served under a Contract may be addressed to a party at the address indicated in the Contract or such other address as that party shall have previously notified to the other party pursuant to this clause 14.2.

- 13.3 The Customer shall not assign any Contract in whole or in part save with the prior written consent of the Company. The Company shall be free as it sees fit from time to time to assign the whole or part of any Contract and/or to subcontract the performance of the whole or any part of the Services.
- 13.4 Save in any circumstances expressly referred to in a Contract (including without limitation under the provisions of clause 4.2) no modification or amendment to that Contract shall be binding unless contained in a written instrument and signed by the duly authorised representatives of both parties.
- 13.5 In no circumstances shall any modification or amendment to a particular Contract affect any other Contract or these Conditions unless expressly provided in writing.
- 13.6 The failure of either party at any time to enforce any provision of a Contract or of these Conditions shall not be deemed a waiver of any such provision or of any other provision or of such party's right thereafter to enforce such provision.
- 13.7 Nothing in these Conditions or any Contract shall be construed as creating a partnership or agency between the parties.
- 13.8 Each Contract contains all the terms agreed by the parties relating to the subject matter referred to therein and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing. In the event of a conflict between the various terms of any Contract any Special Conditions shall take precedence over the general terms and conditions of supply set out herein.
- 13.9 No representation undertaking or promise shall be taken to have been given or been implied from anything said or written in negotiations between the parties prior to the Contract except as set out in the Contract. In particular, but without prejudice to the generality of the foregoing, the Customer acknowledges that it has not been induced to enter into the Contract by any representation or warranty other than those contained in the Contract. The Customer irrevocably and unconditionally waives any right it may have to claim damages for and/or to rescind the contract as a result of any misrepresentation whether or not contained in the Contract unless such misrepresentation was made fraudulently.
- 13.10 Nothing in these conditions and/or a Contract shall confer any right upon any person who is not a party to the Contract in question whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 13.11 The construction, validity and performance of these Conditions and each Contract shall be governed in all respects by English law and all disputes arising in any way out of or affecting these Conditions and/or any Contract shall be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.