

TERMS AND CONDITIONS OF ENGAGEMENT FROM CQMS LIMITED

1. **Interpretation**
- 1.1. In these Conditions:
 - 'Client' means the person who accepts a quotation of the Company for the provision of the Services or whose order for the Services is accepted by the Company.
 - 'Company' means CQMS Limited and its subsidiaries (registered in England and Wales under Company number 02950076).
 - 'Conditions' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Client and the Company.
 - 'Contract' means the contract for the provision of the Services.
 - 'Intellectual Property Rights' means, but is not limited to, all patents, registered and unregistered designs, copyrights, design rights, registered and unregistered trade marks, know-how and all other forms of intellectual property wherever in the world enforceable.
 - 'Output Material' means data, drawings, plans, documents, test results and other information prepared by the Company in relation to the Services.
 - 'Services' means the provision of consultancy, assessment, testing, results, survey, training, inspection, advice or other services which the Company undertakes to perform or provide for The Client under the Contract.
 - 'Writing' includes electronic mail, facsimile transmission and comparable means of communication.
- 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. The headings in this Condition are for convenience only and shall not affect their interpretation.
2. **Basic of the sale**
- 2.1. The Company shall provide the Services and the Client shall pay for the same in accordance with any written quotation or tender of the Company which is accepted by the Client, or any written order of the Client which is accepted by the Company, subject in either Case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.
- 2.2. No Variation to these Conditions shall be binding unless agreed in Writing between the authorised representative of the Client and the Company.
- 2.3. The Company's employees or agents are not authorised to make any representations concerning the Services unless confirmed by the Company in Writing. In entering into the Contract the Client acknowledges that it does not rely on and waives any claim for breach of, any such representations, which are not so confirmed.
- 2.4. Requirements under The Fire Safety (Reform) Order 2005 and The Control of Asbestos at Work Regulations 2006 are not included within this Quotation however can be provided at an additional cost.
- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance or offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
3. **Orders and Specifications**
- 3.1. No order submitted by the Client shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.
- 3.2. The Client shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Client, and for giving the Company any necessary information relating to the Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.3. The Company reserves the right to make any changes in the specification of the Services which are required to conform with any safety or other statutory requirements at any time during the term of the Contract.
- 3.4. No order which has been accepted by the Company may be cancelled by the Client except with the agreement in writing of the Company and on condition that the Client shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), professional fees, damages, charges and expenses incurred by the Company as the result of cancellation.
4. **Assignments and Sub-Contracting**
- 4.1. The Company will perform the Services using its own staff. However, the Company reserves its right to sub-contract the whole or part of the work and the Company is not obliged to inform the Client of the same.
5. **Price of Services**
- 5.1. The price of the Services shall be the Company's quoted price. All prices quoted are valid for 30 days only from the date of the quotation or until earlier acceptance by the Client, after which time they may be altered by the Company without giving notice to the Client.
- 5.2. The Company reserves the right by giving notice to the Client at any time before commencement of the Services, to increase the price of the Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) or any delay caused by any instructions of the Client or failure of the Client to give the Company adequate information or instructions.
- 5.3. Prices detailed in this quotation are based on the number of employees provided. Should the number of employees change by more than 15% CQMS should be notified in writing and additional costs may be incurred.
- 5.4. Unless otherwise and specifically noted, the term 'Service Fee' constitutes a 12 or 36 month Agreement.
6. **Terms of payment**
- 6.1. Subject to any special terms agreed in writing between the Client and the Company, the Company shall be entitled to invoice the Client for the total price of the Services under the Contract at any time after commencement of the same.
- 6.2. Where stage payments are agreed these are not to be made on any other date without prior agreement.
- 6.3. If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
 - 6.3.1. Cancel the Contract or suspend any further provision of the Services to the Client with immediate effect. Any such period of suspension shall be disregarded for the purpose of contractual time limits previously agreed for the completion of the Services
 - 6.3.2. Under The Late Payment of Commercial Debts (Interest) Act 1998, charge the Client interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above (National Westminster Bank Plc) base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and
 - 6.3.3. The Company will be entitled to reimbursement of all external or additional costs and expenses reasonably incurred in the enforcement of its rights under this clause including but not limited to the payment of debt recovery and/or legal fees and expenses whether incurred before or after legal proceedings. Interest on this expenditure will accrue as set out in sub-clause 6.3.2 hereof from the date the expenditure is incurred.
7. **Force Majeure**
- 7.1. The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control, including but not limited to acts of God, strikes, lock outs or other labour disputes (whether or not relating to either party's workforce), accidents, war, national emergency, acts of terrorism protests, riot, civil commotion, fire explosion, flood, epidemic, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services.
8. **Confidentiality and Intellectual Property**
- 8.1. The property, and any copyright, design rights or other Intellectual Property Rights in any Output Material shall, unless otherwise agreed in Writing between the Client and the Company, belong to the Company, but the Client shall be entitled to use the Output Material for the purposes of utilising the Services by way of an exclusive licence, subject to payment in full of all sums payable under this Contract.
- 8.2. Any information provided by the Client which is so designated by the Client and any Output Material shall be kept confidential by the Company, and all Output Material or other information provided by the Company which is so designated by the Company shall be kept confidential by the Client: but the foregoing shall not apply to any documents or other materials, data or other information which either party is required to disclose by law or by statutory requirements or which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.
- 8.3. The Output Material is prepared exclusively for the Client for the purposes of the Contract and may not under any circumstances be used by any third party. The Company is not liable for any Output Material so used and the Client shall indemnify the Company against all liability and loss, damages and expenses of any kind whatsoever awarded against or incurred by the Company in connection with any claims by third parties in connection with such use of the Output Material
- 8.4. The Client shall not by any act or omission do or authorise any third party to do anything which would or might invalidate or be inconsistent with any Intellectual Property Rights, design rights or copyright of the Company in the Output Material
- 8.5. The Client shall promptly notify the Company in Writing of any actual or suspected infringement of the Company's Intellectual Property Rights, design rights or copyright in the Output Material which comes to the Client's notice
- 8.6. While the Company is not aware, to the best of its knowledge, that any Output Material is in infringement of any design rights, copyright or other Intellectual Property Rights of any third party, it does not give any particular warranty in this respect.
9. **Warranty and Limitation of Liability**
- 9.1. Except as expressly provided in this Contract and so far as is permitted by statute all warranties, conditions, guarantees or representations, express or implied, statutory or otherwise are hereby excluded, and the Company shall not be liable for any loss, damage, expense or injury of any kind whatsoever, consequential or otherwise, arising out of or due to or caused by any defects or deficiencies of any sort in the Services, (including any delay in providing or failure to provide the Services) whether such defects or deficiencies are caused by the negligence of the Company or its employees or agents or otherwise.
- 9.2. The Services are provided to and for the benefit of the Client exclusively and all collateral warranties are hereby excluded. The Company shall not be liable to any third party who seeks to use the Services without the Company's express written permission for any loss, damage, expense or injury of any kind whatsoever, consequential or otherwise, arising out of or due to or caused by any defects or deficiencies of any sort in the Services whether such defects or deficiencies are caused by the negligence of the Company or its employees or agents or otherwise.
- 9.3. The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Client which are incomplete, incorrect, inaccurate, or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 9.4. No liability is accepted by the Company for loss or damage howsoever caused to any goods or samples submitted for examination by the Client. Following examination of the goods or samples the remainder will only be returned to the Client upon written request. Unless the Company receives notice in Writing to the contrary the Company shall be entitled to dispose of all goods or samples within 6 months of the completion of the Contract.
- 9.5. Nothing in this Contract shall limit or exclude the Company's liability for death or personal injury resulting from the negligence of the Company or that of its employees or agents.
- 9.6. The entire liability of the Consultancy under or in connection with the Agreement shall not exceed a multiple of 10 (ten) times the Company's charges for the provision of the Services under the Contract.
- 9.7. The Client shall indemnify and keep the Company indemnified against all costs, expenses, damages or other losses of any kind whatsoever incurred or suffered by the Company as a result of any claims made against the Company due to the infringement of any regulation, enactment or legislation by the Client.
- 9.8. The Client is under a duty to mitigate any losses howsoever caused.
- 9.9. The Client acknowledges and agrees that the limitation of liability contained in this clause is:
 - 9.9.1. fair and reasonable;
 - 9.9.2. reflected in the level of charges and of insurance cover carried by the Company
 - 9.9.3. just and equitable having regard to the extent of the responsibility of the Company for any loss or damage suffered, on the basis that all other consultants, the contractor and any subcontractors who have a liability shall be deemed to have provided contractual undertakings to the Client on terms no less onerous than those contained in this Contract
10. **Dispute Resolution And Applicable Law**
- 10.1. Any dispute or difference arising out of or in connection with this Contract may be referred, at the option of either party, to adjudication. The person who is to act as the adjudicator shall be agreed between the Client and the Company.
- 10.2. Notwithstanding clause 10.1 above the Company can refer any disputes relating to its Intellectual Property Rights, design rights, copyright and late payment of monies due under the Contract to the Courts without having recourse to the adjudication process.
- 10.3. The Contract shall in all respects be subject to and construed in accordance with English Law and the Client submits to the exclusive jurisdiction of the English Courts.
11. **Events of Default, Termination, Repossession, Suspension**
- 11.1. If:
 - 11.1.1. the Client fails to pay any sums when due or other wise materially breaches any of the terms of the Contract or any other terms agreed with the Company; or
 - 11.1.2. the Client is, or for statutory purposes is deemed to be or appears to be unable to pay its debts as they become due, or the value of its assets is less than the amount of its liabilities (including contingent and prospective liabilities) or the Client otherwise becomes insolvent or suspends payment or threatens to do so or ceases to trade; or
 - 11.1.3. the Client makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 11.1.4. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client; or
 - 11.1.5. the Client ceases, or threatens to cease, to carry on business; or
 - 11.1.6. where the Client is an individual or partnership, he or any partner dies; or
 - 11.1.7. outside England and Wales anything corresponding to any of the above occurs; or
 - 11.1.8. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client. The Client shall notify the Company forthwith in Writing of such event.
- 11.2. In all the above cases the Company may (at its discretion, whether or not it has received notice from the Client as set out in clause 11.1 and without prejudice to its other rights hereunder or otherwise) at any time by notice to the Client do any one or more of the following:
 - 11.2.1. terminate, cancel and/or rescind the Contract and other contracts with the Client with immediate effect;
 - 11.2.2. declare immediately due, payable and interest-bearing under clause 6.3.2. above any amounts owed by the Client to the Company under any contract;
 - 11.2.3. suspend the provision of any Services to the Client;
 - 11.2.4. proceed against the Client for any sums owing under the Contract and/or damages, as appropriate.
- 11.3. The use by the Company of any of the provisions set out in clause 11.2 does not prejudice or affect any right of action or remedy which has accrued or shall accrue to the Company thereafter.
12. **General**
- 12.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be served by recorded delivery only addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.2. No waiver by the Company of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver, whether it is a waiver of a breach of the Contract or a waiver of the Company's rights under the Contract, will only be effective if it is confirmed in Writing by the Company. The Company's employees or agents are not authorised to make any waivers, of any kind, unless confirmed by the Company in Writing.
- 12.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder or the provision in question shall not be affected thereby.