



QJS (UK) Limited – Terms and Conditions of Trading – 1 April 2013

The Customer's attention is particularly drawn to the provisions of clause 12.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.8.

Contract: the contract between QJS and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from QJS.

Customer Equipment: any equipment, systems, piping, cabling or facilities at the Customer's Premises.

Customer's Premises: means the premises whether or not in the ownership of the Customer at which the Services or part of them are to be provided.

Deliverables: the deliverables set out in the Order for Services (if any) together with all goods, materials and systems utilised, managed, delivered or developed by QJS in connection with the Services in any form including any plans, data reports or specifications or other documentation relating to the same including drafts.

Delivery Location: has the meaning set out in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 15.1(a).

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods (including any relevant plans or drawings) either provided or published by QJS or that is agreed in writing by QJS and the Customer.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of QJS's quotation, or otherwise in writing, or verbally or otherwise, as the case may be.

Order Acceptance: has the meaning set out in clause 2.2.

QJS: QJS (UK) Limited registered in England and Wales with company number 07789905 whose registered office is at Saxilby Enterprise Park, Skellingthorpe Road, Lincoln, England LN1 2LR.

QJS Materials: has the meaning set out in clause 8.1(i).

Services: the services, including the Deliverables, supplied by QJS to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by QJS to the Customer.

1.2 Construction. In these Conditions, the following rules apply :

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;

- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when QJS issues written acceptance of the Order or if earlier QJS delivers the Goods to the Customer or begins to provide the Services (**Order Acceptance**) at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of QJS which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by QJS and any descriptions of the Goods or illustrations or descriptions of the Services contained in QJS's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks at any time to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by QJS shall not constitute an offer, and unless otherwise stated is only valid for a period of 30 Business Days from its date of issue.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

- 3.1 The Goods are described in QJS's catalogue and / or other printed materials provided by QJS and / or on the QJS website at www.qjs.co.uk as modified or described in or by the Order and any applicable Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify QJS against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by QJS in connection with any claim made against QJS for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with QJS's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 QJS reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

- 3.4 The Customer will ensure that all Goods which are not installed or maintained by QJS are installed and/or maintained in accordance with any instructions and information provided by QJS or otherwise and in any event in accordance with good trade practice and all legal and regulatory requirements. This clause 3.4 shall survive termination of the Contract.
- 3.5 As use of the Goods without proper training could be dangerous the Customer undertakes to ensure that all end users of the Goods are properly and effectively trained to use them and that in particular they are advised of any safety information relating to use of the Goods provided by QJS to the Customer at any time. This clause 3.5 shall survive termination of the Contract.
- 3.6 The provisions of this clause 3 will also apply to any Deliverables which are the subject of the Contract.

4. DELIVERY OF GOODS

- 4.1 QJS shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and QJS reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 4.2 QJS shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 The Customer shall at the Delivery Location and at its expense provide such equipment and labour as may be required to enable it to take delivery of the Goods upon delivery.
- 4.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. QJS shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide QJS with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If QJS fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. QJS shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide QJS with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.7 If the Customer fails to accept or take delivery of the Goods then within [5] Business Days of QJS notifying the Customer that the Goods are available for delivery, then except where such failure or delay is caused by a Force Majeure Event or by QJS's failure to comply with its obligations under the Contract in respect of the Goods:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the [fifth] Business Day following the day on which QJS notified the Customer that the Goods were available for delivery; and
 - (b) QJS shall then store the Goods until physical delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If 10 Business Days after QJS notified the Customer that the Goods were available for delivery the Customer has not accepted or taken physical delivery of them, QJS may resell or otherwise dispose of part or all of the Goods and, after adding reasonable storage, attempted delivery and selling costs, charge the Customer for any shortfall below the price of the Goods.

- 4.9 The Customer shall not be entitled to reject the Goods if QJS delivers up to and including 5 per cent more or less than the quantity or amount of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of a valid notice from the Customer that the wrong quantity of Goods was delivered.
- 4.10 QJS may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. QUALITY OF GOODS

- 5.1 QJS warrants that on delivery the Goods shall:
- (a) conform in all material respects with their description and any applicable Goods Specification;
 - (b) be free from material defects in design, material and workmanship;
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - (d) be fit for any purpose held out by QJS but not for any other purpose.

- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing within a reasonable time and in any event within 20 Business Days of delivery or within any other applicable time period forming part of the Contract with time in each case being of the essence that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) QJS is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by QJS) returns such Goods to QJS's place of business at QJS's cost,

QJS shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.3 QJS shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow QJS's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods and/or good trade practice;
 - (c) the defect arises as a result of QJS following any drawing, design or Goods Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of QJS;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, QJS shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by QJS under clause 5.2.

5.6 If QJS is not the manufacturer of the Goods QJS will use reasonable endeavours to transfer to the Customer any warranty given to it in connection with the Goods in question.

- 5.7 The provisions of this clause 5 will also apply to any Deliverables which are the subject of the Contract.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until QJS has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) any other goods and services that QJS has supplied to the Customer in respect of which payment has become due.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods on a fiduciary basis as QJS's bailee;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as QJS's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on QJS's behalf from the date of delivery;
 - (e) notify QJS immediately if it becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l); and
 - (f) give QJS such information relating to the Goods as QJS may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or QJS reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy QJS may have, QJS may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them and the Customer hereby grants QJS an irrevocable licence to do so.
- 6.5 QJS will be entitled to payment for the Goods notwithstanding the fact that title to them has not passed to the Customer.
- 6.6 The provisions of this clause 6 will also apply to any Deliverables which are the subject of the Contract.

7. SUPPLY OF SERVICES

- 7.1 QJS shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 QJS shall use all reasonable endeavours to meet any performance dates for the Services specified in the Services Specification or otherwise by QJS in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

- 7.3 QJS shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and QJS shall notify the Customer in any such event if a change will materially affect the nature or quality of the Services.
- 7.4 If after the Commencement Date the Customer requests any variation of the Services to be provided pursuant to the Contract then QJS will be under no obligation to agree any such variation. If QJS does agree to any such variation and so confirms then the Services as so varied will be provided by QJS to the Customer as part of the Contract subject to the Customer agreeing in writing:
- (a) to any consequential changes to the Services Specification notified to the Customer by QJS ;
 - (b) to any changes to the charges for the Services notified to the Customer by QJS; and
 - (c) any other reasonable requirement of QJS.
- 7.5 QJS warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.6 Where the nature of the Services is ongoing or recurring and the Contract does not define the period of time during which the Services will be provided by QJS to the Customer then subject to the provisions of clause 7.2 the term of the Contract will be one year from the formation of the Contract.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification are complete and accurate;
 - (b) co-operate with QJS in all matters relating to the Services;
 - (c) provide QJS, its employees, agents, consultants and subcontractors, with access to the Customer's Premises, Customer Equipment, office accommodation and other facilities as reasonably required by QJS to provide the Services;
 - (d) provide QJS with such information and materials as QJS may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - (e) properly prepare the Customer's Premises and Customer Equipment for the supply of the Services;
 - (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (g) promptly advise QJS of any Health and Safety, security or other legal or other requirements relating to the performance by QJS of the Services at the Customer's Premises;
 - (h) ensure that all Deliverables which are not installed or maintained by QJS are installed and/or maintained in accordance with any instructions and information provided by QJS or otherwise and in any event in accordance with good trade practice and all legal and regulatory requirements and this provision shall survive termination of the Contract;
 - (i) keep and maintain all materials, equipment, documents and other property of QJS (**QJS Materials**) at the Customer's Premises in safe custody at its own risk, maintain QJS Materials in good condition until returned to QJS, and not dispose of or use QJS Materials other than in accordance with QJS's written instructions or authorisation;
 - (j) at the commencement of the Contract advise QJS in writing of the name and contact details of its nominated representative or representatives who shall each have authority to bind the Customer contractually in connection with matters relating to provision of the Services; and

- (k) the use of the Deliverables without proper training could be dangerous the Customer undertakes to ensure that all end users of the Deliverables are properly and effectively trained to use them and that in particular they are advised of any safety information relating to use of the Deliverables provided by QJS to the Customer at any time and this provision shall survive termination of the Contract.
- 8.2 If QJS's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) QJS shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays QJS's performance of any of its obligations;
 - (b) QJS shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from QJS's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - (c) the Customer shall reimburse QJS on written demand for any costs or losses sustained or incurred by QJS arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

- 9.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in QJS's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance and transport of the Goods which shall be paid by the Customer when it pays for the Goods.
- 9.2 The charges for Services shall be as set out in the Order or later in the Order Acceptance and in relation to any Services not so set out shall unless otherwise agreed in writing be on a time and materials basis:
- (a) the charges shall be calculated in accordance with QJS's daily fee rates; and
 - (b) QJS shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom QJS engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by QJS for the performance of the Services, and for the cost of any materials.
- 9.3 QJS reserves the right to increase the price of Goods and Deliverables, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods and / or Deliverables to QJS that is due to:
- (a) any factor beyond the control of QJS (including foreign exchange fluctuations, increase in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give QJS adequate or accurate information or instructions in respect of the Goods.
- 9.4 In respect of Goods, QJS shall invoice the Customer on or at any time after completion of delivery. In respect of Services, QJS shall invoice the Customer weekly in arrears unless the Contract otherwise provides.
- 9.5 The Customer shall pay each invoice submitted by QJS:
- (a) unless the Contract otherwise provides within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by QJS, and

time for payment shall be of the essence of the Contract.

- 9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by QJS to the Customer, the Customer shall, on receipt of a valid VAT invoice from QJS, pay to QJS such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.7 Without limiting any other right or remedy of QJS, if the Customer fails to make any payment due to QJS under the Contract by the due date for payment (**Due Date**), QJS shall have the right to charge interest on the overdue amount at the rate of 4.0% per cent per annum above the then current Lloyds TSB Bank plc base rate or 10.0% whichever is the higher rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against QJS in order to justify withholding payment of any such amount in whole or in part. QJS may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by QJS to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by QJS.
- 10.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on QJS obtaining a written licence from the relevant licensor on such terms as will entitle QJS to license such rights to the Customer.
- 10.3 All QJS Materials are the exclusive property of QJS.

11. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 11 shall survive termination of the Contract.

12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 12.1 Nothing in these Conditions shall limit or exclude QJS's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

- (a) QJS shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
- (b) QJS's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price for the Goods and/or the charges for the Services which are the subject of the Contract or Five Million Pounds whichever figure is the smaller.

12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. TERMINATION

13.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of notice in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company which in this clause 13 means any corporate body) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(b) to clause 13.1(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
- (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies, QJS may terminate the Contract:

- (a) by giving the Customer 30 days written notice;
- (b) with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

13.3 Without limiting its other rights or remedies, QJS shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and QJS if:

- (a) the Customer fails to make pay any amount due under this Contract or any other contract between the Customer and QJS on the due date for payment; or
- (b) the Customer becomes subject to any of the events listed in clause 13.1(b) to clause 13.1(l), or QJS reasonably believes that the Customer is about to become subject to any of them.

14. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to QJS all of QJS's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has yet been submitted, QJS shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of QJS Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then QJS may enter the Customer's Premises and take possession of them and the Customer hereby grants QJS an irrevocable licence to do so. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. GENERAL

15.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of QJS including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of QJSs or subcontractors.
- (b) QJS shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents QJS from providing any of the Services and/or Goods for more than 10 weeks, QJS shall, without limiting its other rights or

remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

15.2 Assignment and subcontracting:

- (a) QJS may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of QJS, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company or other body corporate) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number or by email to an email address provided by the other party.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission or if sent by email on the next Business day after receipt of confirmation of receipt from the recipient or on receipt of a delivery or read return mail from the correct email address or 24 hours from delivery if sent to the correct email address and no notice of delivery failure is received whichever occurs first.
- (c) This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action.

15.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

15.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

- 15.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing by QJS.
- 15.9 Counterparts: The Contract and any documents forming or evidencing part of it may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.
- 15.10 Dispute Resolution: If any dispute arises in connection with these Conditions, the parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party shall give notice in writing (ADR notice) to the other party to the dispute requesting mediation. A copy of the request should be sent to CEDR. The mediation shall start not later than 40 Business Days after the date of the ADR notice.
- 15.11 Governing law and jurisdiction: This Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.