

## **Qi3 TERMS AND CONDITIONS v3.0 June 2002**

### **1. DEFINITIONS**

In these terms and conditions the following terms shall have the following meanings:-

- 1.1 "Client", the person, firm or company purchasing Services under the Contract.
- 1.2 "Contract", the contract for the purchase of Services by the Client, including these Terms and Conditions.
- 1.3 "Qi3", Qi3 Limited a company incorporated in England and Wales (Company Number 4863154) whose registered office is at Unit 69, St Johns Innovation Centre, Cambridge, Cambs, CB4 0WS.
- 1.4 "IPR", patents, rights in designs, copyright and other intellectual property rights but excluding trade marks, rights in confidential information, know-how, skill, expertise, concepts, ideas and any other intangible that can reside in the heads of individuals.
- 1.5 "Materials" all website materials, reports, data, documents, drawings, models and other materials and physical and electronic items of any kind.
- 1.6 "Proposal", the proposal which sets out Qi3's ethical policy, contact details, the services levels, objectives, scope of work, costs and estimated timescale of the Services.
- 1.7 "Results" all IPR and Materials generated by Qi3 in carrying out the Services.
- 1.8 "Services", the services to be provided by Qi3 under the Contract as set out in the Proposal.
- 1.9 "Subcontractors", associates, professional advisors, agency services and other subcontractors subcontracted by Qi3 in pursuance of the Services.

### **2. GENERAL**

- 2.1 Services are provided upon these Terms and Conditions and no agent or representative of Qi3 has any authority to vary or omit these Terms and Conditions. Any Terms and Conditions printed on the Client's order forms or in the correspondence of either party or elsewhere or implied by trade, custom or course of dealing are hereby expressly excluded.
- 2.2 These Conditions constitute the entire agreement between the parties concerning the supply of the Services and supersede any prior promises, undertakings, contracts, agreements or implications (whether written or oral). The Client hereby acknowledges that it has not entered into the Contract in reliance upon any representation other than those which have been expressly included in the Contract.

### **3. THE PROPOSAL**

- 3.1 The Proposal is made after discussions with the Client of its requirements and is made in good faith and on the basis of the information provided to Qi3 by the Client. No oral statement or written statement neither in the Proposal nor in any other document whatsoever is a representation or warranty that the

intended result will be achieved or that any Results will be suitable for the Client. It is the sole responsibility of the Client to satisfy itself that the Proposal is in all respects suitable for its requirements.

- 3.2 Either party may at any time propose, in writing, changes to the Proposal. However, no proposed change shall become effective unless and until the parties have in writing agreed the proposed change.

### **4. PERFORMANCE OF SERVICES**

- 4.1 Qi3 will use all reasonable endeavours to meet any timescales given in the Proposal or to which it has otherwise agreed in writing but any such timescales given shall be regarded as estimates only.
- 4.2 Any advice, opinion, statement of expectation, forecast or recommendation supplied shall not amount to any form of warranty or guarantee that Qi3 has determined or predicted future events or circumstances.
- 4.3 Where individuals to be involved in delivering the Services are named in the Proposal, Qi3 shall use best endeavours to ensure that they are so involved but may substitute those identified for others of equal or similar skills. If the Client reasonably believes that a replacement individual is not of equal or similar skill, the Client may, within 3 months of the date of the relevant individual being substituted only, terminate the Contract by giving no less than 1 month's prior written notice to Qi3.
- 4.4 Where the Services comprise website design services, Qi3 shall upon completion of such website design, deliver the website Materials to the Client for acceptance testing. The Client will complete all the acceptance tests specified in the Proposal or otherwise agreed to in writing by the parties by no later than 14 days of delivery and Qi3 shall provide reasonable assistance and information to carry out such testing. Acceptance shall be deemed upon the earlier of completion of the acceptance tests; or (if, in Qi3's reasonable opinion the acceptance tests have not been carried out or have delayed or been carried out improperly) 21 days after delivery.
- 4.5 In the absence of any agreement in writing to the contrary, Qi3 shall at the beginning of each month of the Contract (or as soon as reasonably practicable thereafter) provide a written programme of activities in relation to the Services to be provided and at the end of each month (or as soon as reasonably practicable thereafter) Qi3 shall provide a brief report detailing the achievement of agreed targets (if any) relating to the Services.
- 4.6 Qi3 may engage experienced and suitably qualified Subcontractors in order to carry out the Services and to the extent that Qi3 is reasonably able to do so, such Subcontractors (together with their fees) shall be specified in the Proposal.

### **5. CLIENT RESPONSIBILITIES**

The Client hereby undertakes to co-operate fully with Qi3 and relevant third parties in all matters relating to the Services, including (but not limited to) providing all necessary information and facilities relating to the Services to enable Qi3 to perform the Services. Qi3 shall be in no manner

liable, in contract, tort or otherwise, for any failure or delay in providing the Services if such failure or delay arises from or is in connection with the Client's failure to comply with its obligations under this clause.

## 6. PRICE

- 6.1 The price of the Services shall be the fee quoted by Qi3 in the Proposal which unless otherwise stated in the Proposal shall be a fixed fee. Any additional time and resources likely to be needed to complete the Services will be agreed where practicable in advance with the Client and will in any event be charged at Qi3's standard hourly rates from time to time in force.
- 6.2 Qi3 reserves the right to review and vary its fees upon each anniversary of the date of the Contract.
- 6.3 In addition, any telephone, travel, hotel and other expenses incurred by Qi3 in providing the Services shall be charged to the Client at cost. The parties shall agree a monthly budget for such expenses and Qi3 shall promptly notify the Client if this budget is materially exceeded.
- 6.4 If the Contract is terminated or suspended, Qi3 shall be entitled to immediate payment for Services provided up to the date of termination, which shall be calculated by reference to Qi3's standard hourly rates from time to time in force.

## 7. PAYMENT

- 7.1 Unless otherwise agreed in writing between the parties, Qi3 will submit invoices for fees payable by the Client on a monthly basis in arrears. The Client shall pay all invoices, together with VAT, within 14 days of the invoice date. Time for payment shall be of the essence.
- 7.2 If payment is not made in full by the due date stated on the invoice, Qi3 reserves the right to charge interest to the Client at an annual rate of 5% above the base rate from time to time of National Westminster Bank plc on the unpaid balance (such interest to accrue on a day to day basis from the due date of payment until receipt by Qi3 of the full amount whether before or after any judgment).

## 8. IPR

- 8.1 Unless otherwise specified in the Proposal, the Results shall be the property of the Client and (subject to the Client paying all sums due to Qi3 under this Agreement) Qi3 hereby assigns to the Client all such rights in the Results.
- 8.2 Nothing shall prevent Qi3 from providing similar services for other clients or providing similar data or materials to other clients or from using any skill, expertise, concepts, ideas, know-how and any other intangible that can reside in the heads of individuals developed or acquired in the provision of the Services for its own benefit or for the benefit of third parties.
- 8.3 The Client shall indemnify Qi3, its directors, employees, agents, representatives, licensees, subcontractors and assigns against any costs, damages, losses, liabilities and expenses which any of the aforesaid incur which arise from or are in connection with Qi3's use of any materials or domain

names provided by the Client to Qi3 in relation to the Services.

## 9. WARRANTIES AND LIABILITY

- 9.1 If Qi3 fails to comply with its obligations under the Contract its liability to the Client in contract, tort, negligence or otherwise for any loss or damages whatsoever resulting shall be limited to [refunding any monies already paid by the Client for the Services] or [a sum equal to the fees paid by the Client for the Services in the 3 months preceding the date of the cause of the claim] or [£250,000].
- 9.2 Qi3 warrants that it will perform all Services with reasonable care and skill and, where the Services include the provision of any deliverables, such deliverables will conform in all material respects to the relevant specification. If it is shown to be in breach of such warranty Qi3 shall at its own cost as soon as reasonably practicable re-perform the relevant Services or instead (if it so decides) waive or refund to the Client such of the fees payable or paid to Qi3 by the Client under the Contract as are attributable to those particular Services. This clause 9.2 states the exclusive remedy of the Client, and the entire liability of Qi3, for breach of such warranty and all other liabilities and warranties of Qi3 are excluded to the fullest extent permissible by law, save that nothing in the Contract shall exclude liability for death or personal injury caused by negligence or for fraudulent misrepresentation.
- 9.3 The warranty contained in Clause 9.2 in relation to deliverables is conditional upon the Client giving written notice of any alleged breach of warranty within 7 days of delivery of the deliverables or in the case of website Materials, within 7 days of the date of acceptance in accordance with Clause 4.4.
- 9.4 The Client shall be solely responsible for the management, conduct and operation of its business and affairs; deciding on its use of the Results, choosing to what extent it wishes to rely on the Results, and/or implementing the Results. Accordingly, Qi3 gives no warranty that the Results are suitable or fit for any purpose and accepts no liability for any loss or damage incurred by the Client brought about by the Client's use of the Results.
- 9.5 Nothing in the Contract should be construed as conferring rights on any third party, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## 10. FORCE MAJEURE

Qi3 shall not be liable or responsible for any loss or damage caused by delay in the performance or non-performance of its obligations hereunder where the same is occasioned by acts or omissions of the Client, acts or delays of subcontractors, strikes, lock-out or trade dispute, difficulties in obtaining labour or materials or any other cause whatsoever beyond Qi3's reasonable control. The Client shall not be invoiced for Services not provided due to such an event.

## 11. TERMINATION

- 11.1 Unless otherwise specified in the Proposal, either party may terminate this Agreement:-

11.1.1 at any time by giving no less than 2 month's prior written notice to the other party.

11.1.2 forthwith by notice in writing if the other party breaches any of the terms of the Contract or if the other party ceases to or threatens to cease to carry on its business or if the other party adopts a resolution for it to be wound up or if a petition is presented for the appointment of an administrator or a receiver or an administrative receiver is appointed in respect of any part of the other party undertaking or assets or if the other party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (or any re-enactment of further enactment thereof).

11.2 Termination of the Contract, for whatever cause, shall be without prejudice to the rights of either party accrued prior thereto, including without limitation any right to payment of any sum and any right to sue in respect of any antecedent breach of the Contract, and termination shall not affect any provision of the Contract which, in order to give full effect to its meaning, needs to survive such termination (and all such provisions shall survive such termination to the extent necessary to give full effect to their meanings).

11.3 Upon termination of this Agreement (howsoever caused) each party shall promptly deliver up to the other party all documentation, records, equipment and other items which are the property of such other party and which have been provided for or in connection with the Contract. If requested by the Client Qi3 shall use best endeavours to assist the Client in ensuring a satisfactory transition provided that any time and resources incurred by Qi3 in providing such assistance will be charged at Qi3's standard hourly rates from time to time in force.

## 12. CONFIDENTIALITY

12.1 Each party shall during the Contract and in perpetuity thereafter maintain secret and confidential the terms of the Contract and all information of a technical or commercially sensitive nature obtained from the other party in connection with respect to the other party's proprietary rights therein, to use the same exclusively for the purposes of the Contract, and to disclose the same (a) only to such third parties including its employees, agents, professional advisers, contractors and sub-contractors pursuant to the Contract (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of the Contract (if any) and (b) upon terms reflecting this clause 12.

12.2 Clause 12.1 shall not apply to information which prior to receipt thereof from the disclosing party was in the possession of the other and at its free disposal; or is subsequently disclosed to the recipient party without any obligations of confidence by a third party who has not derived it directly or indirectly from the relevant other party; or is or becomes generally available to the public through no act or default of the recipient party or its employees, agents, contractors or sub-contractors; or is required by law to be disclosed.

12.3 This clause 12 shall survive any termination or expiry of the Contract and continue in force for 5 years thereafter.

12.4 Notwithstanding clause 12.1 above, for the purposes of marketing or publicising or selling Qi3's services, Qi3 may disclose the Services provided and identify the Client provided that any such disclosure shall be restricted to indicating only the general nature or category of the Services. Qi3 shall also be entitled to include on its own website a link to the Client's website and to reproduce the Client's logo, trademarks and trade names on its marketing and publicity material. Any case study prepared by Qi3 relating to the Contract shall be subject to the Client's prior approval, which shall not be unreasonably withheld or delayed.

## 13. NON-SOLICITATION

The Client shall not, directly or indirectly, solicit the employment of any of Qi3's directors, key officers, employees or sub contractors involved in performing the Services while the Services are being performed or for a period of 6 months following their completion or following termination of the Contract. For the purposes of this clause 13, key officers and employees shall include any officer or employee the loss of whom would have a materially adverse effect on Qi3's business.

## 14. GENERAL

14.1 Both parties shall comply with their obligations under the Data Protection Act 1998 (or any statutory re-enactment of that Act and undertake not to act in any way which may result in the other party incurring any liability under the Act.

14.2 Neither party shall without the prior written consent of the other assign, transfer or sub-contract any of its rights or obligations under the Contract Reference in the Proposal to Qi3's subcontractors shall be deemed consent by the Client to such subcontracting by Qi3.

14.3 No waiver of any term of the Contract shall be deemed to be a waiver of any other term of the Contract.

14.4 Notices under the Contract are to be served in writing and may be served by fax or first class pre-paid post to the recipient party's address as it appears in the Proposal. Notices served by fax shall be deemed received immediately following transmission (subject to issue of a valid transmission slip) and notices served by post shall be deemed to have been received 48 hours after despatch.

14.5 If any of the terms hereof are held to be void or unenforceable by any reason of law, it shall be void or unenforceable to that extent only and no further and all other terms shall remain valid and fully enforceable.

14.6 The headings used in these Terms and Conditions are for ease of reference only and shall not in any way affect the construction thereof.

14.7 The Contract shall be governed by and construed in all respects in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts in respect of any dispute or claim arising out of or relating to the Contract.