



Q U I N T A I N

**Terms and Conditions for the Supply of  
Goods and Services to Quintain Limited  
and Associated Companies**

## 1 INTERPRETATION

1.1 In these Conditions, the following definitions apply:

<b>"Commencement Date"</b>	has the meaning set out in clause 2.2;
<b>"Confidential Information"</b>	all documents and information in any form (including electronic, oral and written) which relate to the Company's business and its commercial and development activities provided by the Company and/or any of its professional advisers, consultants, contractors or sub-contractors and which includes;
<b>"Conditions"</b>	means these terms and conditions as amended from time to time in accordance with clause 18.3;
<b>"Contract"</b>	means the contract between the Company and the Supplier for the supply of Goods and/or Services in accordance with these Conditions;
<b>"Company"</b>	means Quintain Limited registered in England and Wales with company number 02694983 and its subsidiary companies and affiliates;
<b>"Company Materials"</b>	has the meaning set out in clause 5.3(i);
<b>"Deliverables"</b>	means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
<b>"Delivery Address"</b>	means the address for delivery specified in the Order or otherwise separately notified by the Company to the Seller;
<b>"Goods"</b>	means the goods (or any part of them) detailed in the Order;
<b>"Goods Specification"</b>	means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Company and the Supplier;
<b>"Intellectual Property Rights"</b>	means any patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>"Order"</b>	means the Company's purchase order for the purchase of the Goods and/or Services, or the Company's order as set out in the Company's written acceptance of the Supplier's quotation as the case may be;

<b>"Services"</b>	means the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification;
<b>"Service Specification"</b>	means the description or specification for the Services to be provided as agreed in writing by the Company and the Supplier;
<b>"Supplier"</b>	means the person or firm from whom the Company purchases the Goods and/or Services; and
<b>"Working Day"</b>	means Monday to Friday inclusive, but excluding any day which is a public holiday in England and Wales.

1.2 In these Conditions, where the context requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing persons shall include firms, companies and corporations and vice versa;
- (c) the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and
- (d) any reference to a clause means a clause of these Conditions.

1.3 Headings or titles in these Conditions are for ease of reference only and do not form part of or affect the interpretation of these Conditions.

1.4 Where a party consists of more than one person, covenants and obligations of that party shall be deemed to be made jointly and severally.

1.5 Any reference to a statute or statutory instrument shall be construed as including a reference to any modification, extension or re-enactment to it.

1.6 References to 'in writing' shall include any method of reproducing words in a legible and permanent form, and shall include email correspondence.

## 2 BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Company to purchase the Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing a written acceptance of the Order; or
- (b) any act by the Supplier consistent with fulfilling the Order (including the delivery of any part of the Goods or the commencement of the Services)

at which point and upon which date the Contract shall come into existence (the "**Commencement Date**") (save only where the Company has previously withdrawn the Order by written notice to the Supplier).

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate (including any terms appearing on any quotation or any acknowledgement of order), or which are implied by trade, custom, practice or course of dealing.

2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application of certain Conditions to one or the other is specified.

### **3 SUPPLY OF GOODS**

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description and any applicable Goods Specification;
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Company, expressly or by implication, and in this respect the Company relies on the Supplier's skill and judgment;
- (c) be free from defects in design, materials and workmanship;
- (d) comply with all applicable statutory and regulatory requirements (including any codes of practice and guidance issued) relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and
- (e) be designed and manufactured so as to be safe and without risk to health or property when property used.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Company shall have the right to inspect and test the Goods at any time before delivery.

3.4 If following such inspection or testing the Company considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings in clause 3.1, then the Company shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Company shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

### **4 DELIVERY OF GOODS**

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the

Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- (c) if the Supplier requires the Company to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order;
- (b) to the Delivery Address;
- (c) during the Company's normal hours of business on a Working Day, or as instructed by the Company.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Address.

4.4 The time for delivery of the Goods and/or performance of the Services shall be of the essence in the Contract. Failure to meet the specified date for delivery of the Goods and/or Services pursuant to clause 4.2 shall entitle the Company to any of the remedies listed in clause 6.1.

4.5 If the Supplier:

- (a) delivers less than 95 per cent of the quantity of Goods ordered, the Company may reject the Goods; or
- (b) delivers more than 105 per cent of the quantity of Goods ordered, the Company may at its sole discretion reject the Goods or keep the excess Goods at no additional cost,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers less than the quantity of Goods ordered, and the Company accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.6 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Company to the remedies set out in clause 6.1.

4.7 The Supplier warrants that it has full title to the Goods and that the Goods shall be transferred to the Company with full title guarantee, free of all charges, liens, mortgages and encumbrances. Title and risk in the Goods shall pass to the Company on completion of delivery of the Goods in accordance with this Contract. Until delivery to the Delivery Address the Goods shall be at the risk of the Supplier in all respects (including offloading the Goods from the transport vehicle).

4.8 If for any reason the Company is unable to take delivery of the Goods on the due date the Supplier will store or arrange for the storage of the Goods for a reasonable time and will safeguard the Goods and take all reasonable steps to prevent their deterioration until actual delivery.

## **5 SUPPLY OF SERVICES**

5.1 The Supplier shall from the Commencement Date or (where specified) from the date set out in the Order and for the duration of this Contract provide the Services to the Company in accordance with the terms of this Contract.

5.2 The Supplier shall meet any performance dates for the Services specified in the Order or separately notified to the Supplier by the Company.

5.3 In providing the Services, the Supplier shall:

- (a) co-operate with the Company in all matters relating to the Services, and comply with all instructions of the Company;
- (b) perform the Services with the all skill, care and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use only personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- (d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Company;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Company, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- (h) observe all health and safety rules and regulations and any other security requirements that apply at any of the Company's premises;
- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Company to the Supplier (the "**Company Materials**") in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation;
- (j) not do or omit to do anything which may cause the Company to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Company may rely or act on the Services.

## 6 COMPANY REMEDIES

6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Company shall, without limiting its other rights or remedies, be entitled in its absolute discretion to:

- (a) terminate the Contract (in whole or in part) with immediate effect by giving written notice to the Supplier;
- (b) refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

- (c) recover from the Supplier any additional costs incurred by the Company in obtaining substitute goods and/or services from a third party;
- (d) where the Company has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
- (e) claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to comply with the terms of the Contract.

6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Company shall be entitled in its absolute discretion, whether or not it has accepted the Goods to:

- (a) reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- (b) terminate the Contract with immediate effect by giving written notice to the Supplier;
- (c) require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- (d) refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) recover from the Supplier any expenditure incurred by the Company in obtaining substitute goods from a third party; and
- (f) claim damages for any additional costs, loss or expenses incurred by the Company arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

6.4 The Company's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

## **7 COMPANY'S OBLIGATIONS**

The Company shall:

- 7.1 provide the Supplier with reasonable access at reasonable times to the Company's premises for the purpose of providing the Services;
- 7.2 provide such information as the Supplier may reasonably request for the provision of the Services and the Company considers reasonably necessary for the purpose of providing the Services.

## **8 CHARGES AND PAYMENT**

8.1 The price for the Goods and/or the Services;

- (a) shall be the price set out in the Order; and

- (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, and/or shall be the full remuneration for the performance of the Services unless otherwise agreed in writing by the Company. No extra charges shall be effective unless agreed in writing and signed by the Company.

- 8.2 In respect of Goods, the Supplier shall invoice the Company on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Company on completion of the Services. Each invoice shall include such supporting information required by the Company to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.3 In consideration of the supply of Goods and/or Services by the Supplier, the Company shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.4 All amounts payable by the Company under the Contract are exclusive of valued added tax ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Company, the Company shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 8.5 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate current at the date the payment became overdue. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 8.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Company to inspect such records at all reasonable times on request.
- 8.7 The Company may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Company against any liability of the Company to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

## **9 INTELLECTUAL PROPERTY RIGHTS**

- 9.1 In respect of the Goods and any goods that are transferred to the Company as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Company, it will have full and unrestricted rights to sell and transfer all such items to the Company.
- 9.2 The Supplier assigns to the Company, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 9.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.



9.4 The Supplier shall, promptly at the Company's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Company may from time to time require for the purpose of securing for the Company the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Company in accordance with clause 9.2.

9.5 All Company Materials are the exclusive property of the Company.

## **10 INDEMNITY**

10.1 The Supplier shall keep the Company indemnified against all liabilities, costs, expenses, damages and losses suffered or incurred by the Company as a result of or in connection with:

- (a) any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services;
- (b) any claim made against the Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, or a breach of the undertakings in clause 3.1;
- (c) any claim made against the Company by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or sub-contractors.

10.2 This clause 10 shall survive termination of the Contract.

## **11 INSURANCE**

The Supplier shall at its own expense maintain at all times, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **12 CONFIDENTIALITY**

12.1 The Supplier shall subject to clause 12.2:

- (a) keep all Confidential Information it has received confidential, with the same degree of security and protection that it affords to its own business interests;
- (b) not disclose any Confidential Information to any other person without the prior written consent of the Company or in accordance with this clause; and
- (c) not use any Confidential Information for any purpose other than the performance of its obligations under this Contract.

12.2 Clause 12.1 does not apply to the disclosure of Confidential Information:

- (a) to a director, officer, employee, agent or sub-contractors or sub-consultants of the Supplier whose function requires such person to have the Confidential Information for purposes of performing the Contract;

- (b) to the Supplier's insurers for the purpose of obtaining their approval of the Contractor or to the Supplier's solicitors for the purpose of obtaining legal advice, provided that the Supplier shall ensure that such disclosure is on the basis that clause 12.1 applies to such advisers;
- (c) which is required by law or any applicable regulation to be disclosed; and
- (d) that is in the public domain at the date of the Contract or which comes into the public domain at any time after the date of this Contract other than through any breach of this Agreement by the Supplier or any of its employees or agents.

12.3 The Supplier will indemnify the Company from any loss, damage, costs or expenses whatsoever arising directly or indirectly from any breach of this clause 12. In addition and without prejudice to the foregoing the Supplier acknowledges that the indemnity alone may not be an adequate remedy for any such breach and that the Company shall therefore have the right to seek injunctive relief (including emergency relief).

12.4 This clause 12 shall survive termination of the Contract.

### **13 TERMINATION**

13.1 Without limiting its other rights or remedies, the Company may terminate the Contract:

- (a) in respect of the supply of Services, forthwith at any time by giving the Supplier written notice; and
- (b) in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. The Company shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination,

but such compensation shall not include loss of actual or anticipated profits or any consequential loss.

13.2 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing to do so;
- (b) the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
- (c) the Supplier has a winding up petition presented against it or enters into liquidation whether compulsory or voluntary (except for the purposes of bona fide reconstruction or amalgamation) or compounds with or makes any arrangement with its creditors or makes a general assignment for the benefit of its creditors, or if it has a receiver, manager, administrative receiver or administrator appointed over the whole or substantially the whole of its undertaking or assets, or if it has an administration petition presented or administration application made against it or a notice of intention to appoint an administrator has been given to any person or if it ceases or threatens to cease to carry on its business, or if it suffers any analogous process under any law in any jurisdiction.

13.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

13.4 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

#### **14 CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason, the Supplier shall immediately deliver to the Company all Deliverables whether or not then complete, and return all Company Materials. If the Supplier fails to do so, then the Company may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

#### **15 FORCE MAJEURE**

15.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of their respective obligations under it if such a delay or failure result from events, circumstances or causes beyond their reasonable control.

15.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

15.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 7 Working Days, the Company may terminate the Contract immediately by giving written notice to the Supplier.

#### **16 ASSIGNMENT AND OTHER DEALINGS**

16.1 The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

#### **17 NOTICES**

17.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or e-mail.

17.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Working Day after sending.

## **18 GENERAL**

- 18.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 18.2 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.3 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Company.
- 18.4 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 18.5 If the Supplier is a partnership then each of the partners (including those joining the partnership from time to time) shall be jointly and severally liable under this Contract.
- 18.6 The Supplier shall perform the Contract in compliance with the Company's policies on sustainability, anti-bribery and corruption, health and safety and responsibility, all of which the Supplier acknowledges have been provided to it by the Company on its website.

## **19 THIRD PARTIES**

Nothing in the Contract confers on any third party any benefit of any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **20 GOVERNING LAW AND JURISDICTION**

- 20.1 The 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 the laws of England and Wales.
- 20.2 Each party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) except for the purposes of any enforcement proceedings in respect of any decision, judgment or award of such Courts in another jurisdiction.