

TERMS AND CONDITIONS

1.1 The buyer means the account applicant or person who buys or agrees to buy goods from the seller.

1.2 The seller means Quintessence Limited.

1.3 Conditions means the conditions of sale set out in this document and any special conditions agreed in writing by the seller.

1.4 Goods means any goods or services offered for sale by the seller from time to time.

2 Conditions

2.1 These conditions shall apply to all the contracts for the sale of goods by the seller to the buyer to the exclusion of all other terms and conditions including any which the buyer may purport to apply under any purchase order, confirmation of order or similar document.

2.2 No variation or addition to these conditions shall be effective unless agreed in writing by the seller.

2.3 No contract for the sale of goods shall arise until the seller despatches the goods to the buyer or the buyer notifies the seller in writing of its acceptance of the sellers quotation (whichever shall first occur)

2.4 Acceptance of delivery of goods shall be deemed conclusive evidence of the buyer's acceptance of these conditions.

2.5 Nothing in these conditions shall effect the statutory rights of any consumer.

3 Prices

3.1 The price shall be that on the seller's current price list (or if applicable, the price contained in the sellers quotation).

3.2 The seller reserves the right to revise prices prior to despatch of goods to reflect any direct or indirect increase in costs to the seller. If the price has been paid in full prior to despatch no price revision may take place without the prior written agreement of the buyer.

3.3 All prices are exclusive of VAT and charges for packaging and carriage which shall be paid in addition.

3.4 In the case of consumer sales, payment must be made in full before despatch of any goods.

3.5 In the case of other sales, payment is due in full on the terms of credit agreed which shall not be more than 30 days from the date of the invoice. Time for payment shall be of the essence and any failure to pay shall entitle the seller, at its option, to treat the contract as repudiated by the buyer or to delay delivery until paid (in addition to any other remedy).

3.6 If any act or proceedings shall be commenced in which the buyers solvency is concerned, all moneys under the transaction covered by these conditions shall become immediately due and payable.

4 Interest on Overdue Invoices

4.1 Interest on overdue invoices shall accrue daily, commencing from the date payment becomes due until the date of payment, at 2% per calendar month both before and after judgement.

4.2 All invoices shall be paid in full free from any deduction for any set off, counterclaim or otherwise howsoever.

5 Warranty

5.1 The seller warrants that the goods will, at the time of delivery, correspond to the description given by the seller. Except where the buyer is dealing as a consumer (as defined in the unfair contract terms act 1977, Section 12) all other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the goods, whether implied by statute, common law or otherwise are excluded and the buyer warrants that the buyer is satisfied as to the suitability of the goods for the buyers purpose. The seller offers a warranty service for all hardware products supplied directly to the buyer whereby specific terms will be included, please refer to warranties issued at point of sale for individual products. All warranties are subject to the sellers warranty validation process <http://www.quintessenceltd.co.uk/warranty-service/>

6 Delivery

6.1 Whilst every reasonable effort shall be made to keep to any delivery date, time of delivery shall not be of the essence and the seller shall not be liable for any losses, costs, damages or expenses incurred by the buyer or any other person or company arising directly or indirectly out of any failure to meet any estimated delivery date. This includes and is not limited to delays arising from ports, shipping, flights and transportation.

6.2 Unless otherwise agreed the seller may deliver by instalments and in such case each instalment shall be treated as a separate contract and any delay, default or non delivery in respect of any instalment by the seller shall not entitle the buyer to cancel the remainder of the contract.

6.3 Failure by the buyer to pay for any instalment or delivery when due shall entitle the seller to withhold further deliveries and the buyer shall be liable for any costs incurred by the seller relating to such goods which the seller is then entitled to withhold.

6.4 Delivery of the goods shall be made to the buyer's address and the buyer shall make all arrangements necessary to take delivery of the goods whenever they are tendered for delivery.

7 Ownership and Risk

7.1 The risk in goods shall pass to the buyer when a contract is made but kept at the seller's premises at the buyer's request. This includes and is not limited to goods held in the seller's storage. The buyer may incur additional charges for storage from the seller if not agreed in the original contract or if changes are made to the installation and handover schedule by the buyer.

7.2 The seller remains the owner of the goods affected by the contract until the seller has been paid in full for such goods.

7.3 If any payment due under these conditions becomes overdue in whole or part, the seller may, without prejudice to any of its other rights, recover and/or re-sell the goods in whole or part. The seller, its servants, or agents may enter the buyer's premises, with his permission hereby confirmed as a condition of contract, to recover the goods and the buyer shall be liable for all the seller's costs of so doing.

7.4 If the buyer is a consumer and properly rejects any of the goods which are not in accordance with the contract, the buyer shall nonetheless pay the full price for such goods unless the buyer promptly gives notice of rejection to the seller and at the buyer's cost return such goods to the seller in good condition.

7.5 In the case of any other sale the buyer shall inspect the goods immediately upon delivery and shall notify the seller within five days of delivery if the goods are damaged or do not comply with the contract. If the buyer fails to do this, he is deemed to have accepted the goods.

7.6 Any goods in respect of which any claim of defect or damage is made shall be preserved by the buyer intact together with the original packing at the buyer's risk and either:

(a) Retained by the buyer for a reasonable period to enable the seller or its agent to inspect or collect the goods, or

(b) at the seller's option, returned by the buyer to the seller who will refund the cost of postage and packing to the buyer if the goods are in fact defective.

8 Cancellation and Returns

8.1 No contract shall be cancelled nor shall any goods, which are in accordance with the contract, be returned without prior written approval of the seller. All cancellations or returns shall be subject to terms determined at the absolute discretion of the seller.

8.2 Should the seller agree to accept the return of any such goods (unless the seller, at its discretion, decides otherwise) then:

(a) A goods return number, obtained from the seller, must be clearly shown on the returned parcels, without defacing the original retail packaging of any goods.

(b) The goods to remain at the buyer's risk in all respects until received by the seller. The buyer will be liable for the cost of remedying any damage to the goods returned where such damage has, in the opinion of the seller, been caused by the goods being inadequately packaged by the buyer or through the buyers fault.

(c) The seller reserves the right to make a handling and restocking charge of 25% on goods which are returned if they were ordered in error or are no longer required.

9 Force Majeure

9.1 The seller will not be under any liability whatsoever in the event that the seller is prevented or delayed from supplying or making delivery of any goods by any reason or cause beyond the seller's control.

10 No Waiver

10.1 The seller's failure to insist upon strict performance of any provision of these conditions shall not be deemed to be a waiver of its rights or remedies in respect of any present or future default of the buyer in performance of compliance with any of these conditions.

11 Liability

11.1 Except as may be implied by law where the buyer is dealing as a consumer, in the event of any breach of these conditions by the seller the remedies of the buyer shall be limited to damages which shall in circumstances not exceed the price of the goods and the seller shall under no circumstances be liable for any indirect, incidental or consequential damages. The seller will not be under any liability whatsoever for issues arising from products and services supplied by third parties. This includes and is not limited to, lighting controllers, PC's, hardware screens, internet networks, cabling and wiring that is been supplied by this parties.

12 Year 2000 Liability

12.1 The seller makes no warranty or representation that any goods supplied by it are or will be year 2000 compliant and any terms or condition which may be implied by common law, statute or otherwise to the contrary are hereby excluded to the fullest extent permitted by law. The seller shall have no liability whether in contract, tort (including negligence) or otherwise to the buyer for any loss, damage costs, claims or liabilities whatsoever incurred or suffered by the buyer which relate or are attributable either directly or indirectly to any goods supplied by the seller to the buyer not being Year 2000 compliant, save to the extent that we have given specific written advice. For this purpose, goods are not Year 2000 compliant if either their performance or functionality is adversely affected by the advent of the Year 2000.

13 Dispute

13.1 In the event of dispute between the buyer and the seller, should the seller request in writing, the buyer agrees to submit the dispute to arbitration in accordance with the arbitration action for the time being in force as a legally binding alternative to court action.

These conditions shall be construed in accordance with English law.

14 Intellectual Property in the Client Content

14.1 All Intellectual Property Rights in the Client Content (any Client Content forming part of the Deliverables) and the Client Materials shall remain your exclusive property save that you grant a licence to all Intellectual Property Rights (for the avoidance of doubt, including any trade marks owned by or licensed to you) in the Client Content and Client Materials to the seller to the extent necessary for it to perform the services and produce the deliverables.

15 Software License and Copyright

15.1 The seller grants to you the right to use one copy of the software programme on a single computer. Multi licences for the software programme to run on multiple computers may be granted depending on the scope of the requirements.

15.2 The software is owned by the seller and is protected by UK copyright law. Therefore you must treat the software like any other copyrighted material (such as a book). You may not copy the written materials accompanying the software.

15.3 The license agreement is your proof of license to exercise the rights granted herein and must be retained by you. You may not rent or lease the software, but you may permanently transfer your rights under this license agreement provided that you (a) transfer this license agreement, the software, and all accompanying written materials; (b) you retain no copies; and (c) the recipient agrees to the terms of this agreement. You may not reverse engineer, decompile, or disassemble the software.

16 Confidentiality

16.1. In this clause 16, “Confidential Information” means all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is identified as confidential at the time of disclosure or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

16.2. Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

16.3. Confidential Information may be disclosed by the receiving party to those of its employees, consultants, sub-contractors and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

16.4. The obligations set out in this clause 16 shall not apply to Confidential Information which the receiving party can demonstrate:

- (a). is or has become publicly known other than through breach of this clause 16; or
- (b). was in possession of the receiving party prior to disclosure by the other party; or
- (c). was received by the receiving party from an independent third party who has full right of disclosure; or
- (d). was independently developed by the receiving party; or
- (e). was required to be disclosed by order of a court or body of competent jurisdiction.

16.5. The obligations of confidentiality in this clause 16 shall not be affected by the expiry or termination of the Services.

17 Privacy and Data Protection

17.1 The seller shall not, under any circumstances, be responsible for ensuring that you comply with the Data Protection Act 2018 or any other applicable law relating to the collection or processing of “Personal Data” (as defined in the Data Protection Act 2018). If any Personal Data are to be collected from End Users and processed by you for any purposes, you agree that you shall provide the seller with a privacy policy for incorporating into the software which discloses your privacy and data protection practices. The seller shall not be responsible for preparing any privacy policy and shall not be responsible for ensuring or certifying that any privacy policy complies with any applicable law or is consistent with your privacy and data protection practices. The seller shall, however, use its reasonable endeavours to provide you with the details of any data collection tools used or placed by any of the Deliverables or Platforms upon request.

18 Project Terms

18.1 100% hardware upfront payment is required from the buyer to the seller once an agreement has been made so that the seller can place advanced orders.

18.2 50% software and service upfront payment is required from the buyer to the seller once an agreement has been made so that the buyer can specifically reserve studio production time. The final % payments will be specified by the buyer to the seller in accordance with the schedule of work.

18.3 The seller will undertake project work and testing for the buyer in accordance with the sellers SDLC project lifecycle framework. A schedule of work including key milestones and sign off dates will be presented to the buyer from the seller in advance of the project start. The seller will seek to require necessary sign off on key milestones from the buyer or buyers suppliers during the project lifecycle with prior approval from the buyer.

18.4 The seller reserves the right to reject supplied content that does not meet the required standards as per it's content guidelines - <https://support.quintessenceltd.co.uk/portal/kb/articles/content-guide>

18.5 Content supplied to the seller by the buyer or the buyers supplier(s) is deemed to be necessary for its intended purpose.

18.6 Failure to meet content deadlines as specified by the seller may result in additional charges to the buyer. This includes content being supplied by the buyers supplier.

18.7 Content received after the deadline may be included in the product by the seller, such content may have faults and is at the buyers risk due to the sellers limited programming time against agreed testing, installation and handover dates.

18.8 Changes requests can be subject to additional charges to the buyer from the seller once the following key milestones have been passed:

- a) The product scope has been agreed between the seller and the buyer.
- b) The seller has completed key programming as per the product scope.
- c) The buyer or buyers supplier has previously signed off against a key milestone.
- d) The seller has completed key stage satisfactory testing at the sellers or the buyers and/or buyers supplier(s) premises.
- e) The seller has completed installation at the buyers or buyers premises.
- f) The seller has completed the handover of the project to the buyer or buyers supplier.
- g) The seller has received sign off for the project from the buyer.
- h) The buyer does not have a support contract in place with the seller.

Change requests include and are not limited to scope, framework, design, content, lighting, hardware.

18.9 The sellers support services for both ad hoc and contracted support are bound by the terms in the seller's customer care statement. <https://www.quintessenceltd.co.uk/customer-care/>

19.0 Installation and Handover Terms

19.1 With prior agreement between the buyer and the seller, the seller may complete testing stages or installation and handover at the buyers suppliers premises.

19.2 The buyer will communicate and agree in advance with the seller the required dates for installation, changes to these dates made by the buyer or the buyers suppliers may result in additional charges to the buyer from the seller if the seller has been negatively impacted as a result of changes made to the schedule. The seller will agree in advance with the buyer on how long the seller will need to complete an onsite installation, testing, handover and training.

19.3 On-site Installations will be carried out by the seller as per the agreed scope of work and the seller will only be responsible for the set up and installation of the agreed products and services that the seller is directly supplying to the buyer.

19.4 The seller may employ the services of preferred suppliers to carry out elements of the installation and/or testing for only the products and services that the seller has agreed to directly supply to the buyer.

19.5 The buyer will provide the seller in advance with onsite installation entry requirements and health and safety regulations. This includes if the buyer requires an installation scope of works and RAMS from the seller and/or the sellers preferred suppliers. The seller and the sellers preferred suppliers reserve the right to refuse carrying out an on-site installation if:

a) Health and safety is deemed at risk at the buyer or buyers suppliers premises by the seller or the sellers preferred suppliers.

b) Previously specified or agreed logistics between the seller and the buyer or buyers suppliers have not been completed ahead of the sellers installation.

19.6 On-site installations and testing carried out by the seller and its preferred suppliers will be conducted as per the sellers installation process framework.

19.7 Faults that arise from third party products and services or equipment that have been supplied to the buyer will not be the responsibility of the seller. Such faults may impact the sellers installation and products and services performance in the future. The seller will communicate to the buyer if potential risks are identified as a result of third party supplied products, services or equipment.

19.8 The seller will complete a handover of products and services, including training with the buyer and/or buyers supplier once the installation is fully complete. At this point, a support contract may be agreed between the buyer and the seller for ongoing support, updates and maintenance.

19.9 The seller will seek to require project sign off from the buyer and/or the buyers suppliers once the installation has been completed.