

EQA (IRELAND) LIMITED

General Terms & Conditions

These General Terms and Conditions apply to and regulate the provision of Services by EQA (Ireland) Limited (hereinafter referred to as "EQA") to the Client. The Client's own terms and conditions are not applicable to any contract entered into by the parties. These General Terms and Conditions replace any previous terms and conditions and the continued use by the Client of the Services provided by EQA constitutes an acceptance of these Terms and Conditions by the Client

1. Definitions

- "Official Quote"** The written fee quotation for services provided by EQA to the Client
- "Regulatory Bodies"** Shall mean all applicable Regulatory Bodies and Scheme Owners with responsibility for accreditation, including but not limited to the Private Security Authority ("PSA") and Irish Nation Accreditation Board ("INAB").
- "Services"** The undertaking of audits for the purpose of auditing and certifying compliance with the EQA (Ireland) Limited Scheme Regulations
- "Scheme Regulations"** The regulations applicable to the Services contracted for by the Client, as may change from time to time and as set out at;
http://www.eqa.ie/wp-content/uploads/2016/04/EQA_Scheme_Regulations.pdf
- "Territory"** The geographical area as specified and referred to in the Official Quote.

2. Interpretation

In these Conditions, words such as "hereunder", "hereto", "hereof" and "herein" and other words commencing with "here" shall, unless the context clearly indicates to the contrary, refer to the whole of these Conditions and not to any particular Section or Clause thereof.

Save as otherwise provided herein, any reference herein to a Section or Clause, or paragraph shall be a reference to a section, sub-section, clause, sub-clause, paragraph or sub-paragraph (as the case may be) of these Conditions.

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.

Any reference to any provision of any legislation shall include any modification, re-enactment or extension thereof. Headings used herein are inserted for convenience only and shall not affect interpretation.

Any reference to "Ireland" shall mean the Republic of Ireland.

Any reference to "Agreement" shall be understood to mean the Contract the subject of the within terms and conditions.

The terms "Agreement", "Licence" and "Contract" shall each be understood to refer to the Contract entered into by the parties in the manner set out, and may be used interchangeably in such context.

3. Application

These Conditions shall be incorporated into and form part of every Agreement and shall apply in place of, and prevail over:

- (i) any terms or conditions (written or oral) contained or referred to in any order, confirmation of order, specification or any other documentation, correspondence or other means of communication delivered by the Client to EQA; and
- (ii) any terms or conditions implied by trade custom, practice or course of dealing between the Client and EQA.
- (iii) These Conditions, together with any other terms in writing stated to form part of this Agreement and accepted in writing by EQA, constitute a legally binding contract between the Client and EQA.

By continuing to use the Services provided by EQA the Client confirms that the Client accepts these terms and conditions.

EQA may change, suspend, withdraw or discontinue any aspect of the Services offered at any time for any technical or administrative reasons whatsoever. EQA shall endeavour to notify the Client of such changes by letter in writing or e-mail.

4. Statutory Rights, Descriptions and Changes

Save as expressly stated in the Contract, all warranties, representations, conditions and other terms implied by statute or common law relating to the Services are, to the fullest extent permitted by law, excluded from the Contract.

All descriptive matter, specifications and advertising issued by EQA and any employee or agent of EQA are issued or published for the sole purpose of giving an approximate idea of the Services and shall not form part of the Agreement (and are hereby expressly excluded therefrom). EQA reserves the right to alter and amend any of its literature at any time without notice to the Client and without liability.

EQA reserves the right to make changes to the Services where required to conform with applicable statutory requirements, legal requirements, and/or, to maintain and improve the quality of the Services and to suspend delivery of the Services whilst making such changes.

EQA shall notify the Client of any changes to be made by it as soon as it may reasonably be practicable for it to do so.

These terms and conditions do not affect the Client's statutory rights (where the Client is a consumer).

5. Formation of Contract

A contract commences between EQA and the Client as soon as the parties acknowledge in writing, whether by email or otherwise, their acceptance of the within Terms and Conditions and applicable Scheme Regulations.

6. Accuracy of Order

The Client is responsible for ensuring the accuracy of any order and/ or specifications which it submits to EQA for the purpose of enabling EQA to provide a Quote and to provide tailored services to the Client. If a Client feels that they have made a mistake in their order and/or specifications or require any changes to be made to same, they shall be required to notify EQA as soon as possible and in any event, within 14 (fourteen) days of submitting such details. Any failure to do so may result in additional costs being charged to the Client and EQA shall not be liable for any loss, damage or costs incurred by the Client due to incomplete, delayed or ineffective auditing and/ or certification by EQA by virtue of inaccurate or incomplete specifications or order details having been furnished by the Client to EQA.

7. The Services

EQA shall perform the Services from the Commencement Date until the Agreement is terminated. Auditing and Certification services are offered by EQA in accordance with the EQA (Ireland) Limited Scheme Regulations.

The Client shall be responsible for providing EQA with all information which it reasonably requires to enable it to perform the Services and for ensuring that all specifications provided to EQA are accurate, complete and up to date. The Client shall also be responsible for obtaining the consent of any third parties to the disclosure of such information.

The Client acknowledges that the Scheme Regulations applicable to the Services to be provided by EQA may be amended from time to time by the Regulatory Bodies. EQA shall not be obliged to inform the Client of any such amendments made by the Regulatory Bodies and it shall be the responsibility of the Client to ensure that it is fully informed as to the current Scheme Regulations applicable to the Services.

8. Client's Obligations

The Client shall be obliged to:

- (i) promptly report any changes to the required Services to EQA.
- (ii) maintain confidentiality of the Agreement with EQA and all associated terms and conditions;
- (iii) comply with any other requirements notified by EQA from time to time;
- (iv) pay all invoices and charges due in the manner prescribed herein;
- (v) ensure all necessary access to records and/ or locations is made available to EQA to such extent as may be necessary to enable EQA perform its contractual obligations with the Client.

EQA reserves the right to charge for any work which it is required to carry out in relation to the Services which is attributable to a failure by the Client to perform the obligations specified herein or such other obligations as may from time to time, be notified by EQA to the Client in writing. Details of any applicable Charges shall be notified to the Client at the relevant time.

9. Payment of Fees

The Client will pay EQA the fees as set forth in the Official Quote provided by EQA.

Fees are calculated by EQA principally on the basis of a) the scope of activities undertaken by the Client, b) the number of permanent office locations of the Client and c) the staff levels of the Client. In the event that there is a change in these variable prior to the undertaking by EQA of the physical assessment, then and in such event EQA reserves the right to increase or decrease the fees set out in the Official Quote.

The number of man days set out in the Official Quote is calculated based on the assumption that travel time to and from sites is not excessive. If it is not possible to complete the audit within the allocated man days then and in such event EQA reserves the right to increase the fees set out in the Official Quote. Such assessment is at the absolute discretion of EQA.

Where additional non-standard services are required by a Client, additional charges shall apply.

Unless otherwise specified in the Official Quote, all fees will be invoiced in advance and all invoices issued under this Agreement liable to VAT at the rate current at the date of the invoice and are payable in advance of the Services being provided by EQA.

Fees set out in the Official Quote include all reasonable expenses within the Territory, including travel and accommodation costs, unless otherwise stated or detailed by EQA separately. In the event that the Client requires EQA to provide services outside Ireland then and in such event additional costs will apply.

Assessment and/ or Surveillance fees do not include any re-visits which may be necessary due to serious problems or matters outside the control of EQA.

The fees set out in the Official Quote are based on EQA's current charge rates and the Regulatory Bodies' requirements for audit duration and site visits. EQA may, at its discretion, increase fees at the beginning of each renewal period or to take into account any change in the Regulatory Bodies' requirements. Any such increase in fees will be notified to the Client in writing prior to any additional work being undertaken in respect of which the increased fees would apply.

At the absolute discretion of EQA, an unsocial hours supplemental fee may be charged where it is necessary for EQA to attend a location where services are being provided outside normal office hours.

If the Client fails to comply with any of the terms of payment for more than 7 days after receiving a written demand, EQA may withhold the provision of the Services without incurring any liability to the Client, and the Client shall remain liable to EQA for all existing and continuing charges due under this agreement.

Unpaid invoices are subject to interest at a rate of 8 per cent over Euribor to EQA from the due date for payment to the actual date of payment compounded quarterly before as well as after judgment.

The Client shall be responsible for EQA's costs of collection in the event of the Client's non-payment of invoice(s). All fees paid are non-refundable (except as otherwise expressly set forth in the Official Quote) and not subject to set-off.

In addition to the above, failure to pay fees levied by EQA within the agreed timeframe will result in the following:

1. **Applicant Organizations**
The current status of the application will be reviewed and the process put on hold pending full payment of fees
2. **Certificated Organizations**
 - a) A review of the Client's certification status will be undertaken and its certification status may be suspended or withdrawn pending full payment of fees.
 - b) Repeated failure to pay fees within the required time frames will result in automatic suspension and may lead to termination of certification.

In the event that the Client fails to comply with any of the terms of payment as set out herein, then and in such event EQA reserves the right to publish on its website the fact of suspension or withdrawal by EQA of the Client's Scheme Certificate.

10. Termination

This Agreement shall commence on the Effective Date and continue for the term specified in the Official Quote.

On the expiry of the said term, one of the following provisions shall apply in accordance with the election made by the Client on signing the Official Quote;

- 10.1 this Agreement will automatically renew for consecutive periods each equal in length to the initial subscription period, unless either party provides the other party with written notice of nonrenewal at least thirty (30) days prior to the end of the then current period; or
- 10.2 this Agreement will automatically terminate upon the expiry of the initial term unless the Client provides EQA with written notice of renewal at least thirty (30) days prior to the end of the term.
 - 10.2.1 Where the Client elects pursuant to this Clause 10.2 and provides EQA with the written notice of renewal as provided for therein, then in such event on the expiry of the renewal period the provisions set out at Clause 10.1 shall automatically apply.

Upon termination of this Agreement, all rights granted herein to the Client will terminate.

Either party may terminate this Agreement in the event the other party materially breaches this Agreement and fails to remedy such breach within thirty (30) days from receipt of written notice thereof.

EQA may suspend or terminate the Client's Scheme Certificate and the provision of Services to the Client at any time in the event of the Client's breach of any of the terms of the Contract and these terms and conditions.

EQA may terminate the Agreement at any time (without reason) upon providing the Client with at least 30 (thirty) days' notice in writing. Upon termination by EQA in accordance with this Clause, should the Client have made any payment in advance for Services that have not yet been provided by EQA, EQA will refund such amounts to the Client.

However in the event that the Client cancels a planned and agreed audit and advises EQA of such cancellation at such short notice that the audit team members cannot be re-deployed, then and in such event the Client shall be liable for payment of the full agreed fee for the planned and agreed audit.

In the event that the Client terminates and/ or breaches and/ or withdraws from this Agreement prior to the expiry of the term specified in the Official Quote then and in such event the Client shall be liable to EQA for payment of all sums due under this Agreement and/ or the Official Quote for the unexpired balance of the said term.

EQA may terminate the Agreement at any time with immediate effect by notifying the Client in writing if the Client fails to pay any of the Charges by their due date for payment. Any termination of the Agreement by EQA pursuant to this Clause 10 does not affect EQA's right to charge the Client interest under these Terms and Conditions above or any other rights which may be available to EQA in such circumstances.

EQA may terminate the Agreement with immediate effect by giving written notice to the Client if:

- (i) the Client breaches any term of the Agreement (*other than a breach of its payment obligations, which is dealt with instead above*) and does not remedy the breach within 30 (thirty) days of being asked by EQA to do so;
- (ii) the Client (being a company or other business entity) has a receiver, manager, examiner, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business or enter into liquidation (whether compulsory or voluntary); or
- (iii) the Client (being an individual) is adjudged bankrupt or makes any composition or arrangement with their creditors or suffers distress or execution to be levied on the Premises.

EQA may terminate the Agreement at any time with immediate effect by notifying the Client in writing, including but not limited to notification by e-mail to the Client, if EQA, in its absolute discretion, determines that owing to changes to the size or structure of the Client the Official Quote is not suitable for providing the Services to the Client.

EQA may terminate the Agreement at any time with immediate effect by notifying the Client in writing, if EQA establishes that the payment details provided by the Client are invalid.

11. Confidentiality

During the term of this Agreement, each party (a "Disclosing Party") may provide the other party (a "Receiving Party") with confidential and/or proprietary materials and information ("Confidential Information"). All materials and information provided by Disclosing Party to Receiving Party and identified at the time of disclosure as "Confidential" or bearing a similar legend, and all other information that the Receiving Party reasonably should have known was the Confidential Information of the Disclosing Party, shall be considered Confidential Information; for the avoidance of doubt, the terms of this Agreement are Confidential Information of EQA. The Receiving Party shall maintain the confidentiality of the Confidential Information and will not disclose such information to any third party without the prior written consent of Disclosing Party. The Receiving Party will only use the Confidential Information internally for the purposes contemplated hereunder.

The obligations in this Section shall not apply:

- (i) to any information that is made generally available to the public without breach of this Agreement,
- (ii) to any information that is developed by the Receiving Party independently from the Disclosing Party's Confidential Information
- (iii) to any information that is disclosed to Receiving Party by a third party without restriction, or
- (iv) to any information that was in the Receiving Party's lawful possession prior to the disclosure to the Receiving Party and was not obtained by the Receiving Party either directly or indirectly from the Disclosing Party.
- (v) where a confidentiality waiver has been signed by a Client
- (vi) where the Receiving Party is required by law or court order to disclose Confidential Information; provided that, the Receiving Party provides the Disclosing Party with prompt written notice thereof and uses its best efforts to limit disclosure.

At any time, upon the Disclosing Party's request, the Receiving Party shall return to the Disclosing Party all Disclosing Party's Confidential Information in its possession, including, without limitation, all copies and extracts thereof.

Notwithstanding the foregoing;

- (a) The Receiving Party may disclose Confidential Information to any third-party to the limited extent necessary to exercise its rights, or perform its obligations, under this Agreement; provided that, all such third parties are bound in writing by obligations of confidentiality and non-use at least as protective of the Disclosing Party's Confidential Information as this Agreement and;
- (b) all Feedback shall be solely EQA Confidential Information.

12. Warranty

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. In addition, EQA warrants to the Client that all Services will be performed in a professional and workmanlike manner.

With respect to any breach of this Clause EQA shall use commercially reasonable efforts to promptly correct the applicable defects and/ or shall re-perform the Services at no additional charge to the Client in order to comply with the warranty, provided that the Client notifies EQA in writing of any alleged defect or non-conformance within 7 days after discovery.

The remedies set forth herein shall be the Client's exclusive remedies, and EQA's sole liability, with respect to any breach of this Clause.

Except as expressly set forth in this Clause, EQA disclaims all warranties, express or implied, including, but not limited to, warranties of merchantability, fitness for a particular purpose, and non-infringement. EQA does not make any warranty as to the results that may be obtained from carrying out of any audit.

13. Limitation of Liability

Except as expressly provided herein and so far as is permitted by Statute all warranties, conditions, guarantees or representations, express or implied, statutory or otherwise are hereby excluded, and EQA shall not be liable for any loss, damage, expense or injury of any kind whatsoever, whether special, consequential or indirect nor for any economic loss (including loss of profits, loss of business, depletion of goodwill or loss of business opportunity) arising out of or due to or caused by any defects or deficiencies of any sort in the Services (including any delay in providing or failure to provide the Services), whether such defects or deficiencies are foreseen or unforeseen and whether caused by the negligence of EQA or its employees or agents or otherwise.

The Services are provided to and for the benefit of the Client exclusively and all collateral warranties are hereby excluded. EQA shall not be liable to any third party who seeks to use the Services without the Company's express written permission for any loss, damage, expense or injury of any kind whatsoever, consequential or otherwise, arising out of or due to or caused by any defects or deficiencies of any sort in the Services, whether such defects or deficiencies are foreseen or unforeseen and whether caused by the negligence of EQA or its employees or agents or otherwise.

Notwithstanding anything to the contrary, except for bodily injury of a person, neither party, shall be liable with respect to any subject matter of this agreement, under any legal or equitable theory, for any:

- (a) error or interruption of use, loss or inaccuracy or corruption of data, the cost of procurement of substitute goods, services, or technology, or loss of business;
- (b) indirect, exemplary, incidental, special or consequential damages, even if such party has been advised of the possibility of such loss or damage;
- (c) matters beyond such party's reasonable control; or
- (d) amounts in the aggregate that exceed the fees paid by the Client to EQA during the six (6) month period prior to the date the cause of action accrues (provided that, if no fees are paid, such amounts shall be limited to €1,000.00).

14. Indemnity

The Client will indemnify EQA against all damage and/or loss caused to EQA due to the improper use by the Client of any certification awarded by EQA and for any damage and/ or loss caused to EQA's property by the Client.

The Client will indemnify, defend and hold EQA harmless from and against all third party claims (and all resulting, to the extent payable to third parties, damages, cost and expenses, including reasonable legal fees) arising from infringement by the Client of any third party's intellectual property rights.

15. Non-Solicitation

Until one (1) year after termination of this Agreement, the Client will not encourage or solicit any employee or consultant of EQA to leave EQA for any reason.

16. Publicity

The Client grants EQA the right to use the Client's name and logo on EQA's website, in EQA marketing material, and as part of an EQA client list. EQA undertakes not to use or disclose any personal data, commercially sensitive information, or other such information notified in writing by the Client to EQA as being sensitive information.

17. Dispute Resolution

The Parties will attempt in good faith to resolve any dispute or claim arising out of or in relation to this Agreement through negotiations between a director of each of the Parties with authority to settle the relevant dispute. If the dispute cannot be settled amicably within fourteen (14) days from the date on which either Party has served written notice on the other of the dispute then the remaining provisions of this Clause 17 shall apply.

Mediation

In the event of a dispute between the parties concerning the interpretation of any provision of this agreement or the performance of any of the terms of this Agreement, such matter or matters in dispute shall be firstly settled by mediation. The place of mediation shall be Dublin, Ireland. The language to be used in the mediation proceedings shall be English. The Mediation Tribunal shall consist of a single mediator appointed by agreement between the parties or, failing agreement between the parties within 30 days after a request for mediation is made by any party, appointed on the application of any party by the President for the time being of the Law Society of Ireland.

Performance to Continue During Dispute

Performance of this Agreement shall continue during mediation proceedings. No payment due or payable by the Client shall be withheld on account of a pending reference to mediation or other dispute resolution mechanism except to the extent that such payment is the subject of such dispute.

20. Changes to the Terms and Conditions

EQA may revise these Terms and Conditions from time to time in its absolute discretion.

Where changes are being made by EQA to these Terms and Conditions in accordance with this Clause, the Client shall be notified in writing. Where any such changes involve an increase in the Charges, or a material change to the scope of the Service, which is to the detriment of the Client, the Client will be notified a minimum of 30 (thirty) days before such changes take effect and during that 30 (thirty) day period shall be permitted to cancel the Agreement by notifying EQA accordingly in writing. Any failure by the Client to cancel the Agreement within the 30 (thirty) day period specified in this Clause, will constitute an acceptance of EQA's changes. For the avoidance of doubt, any changes to Charges as a consequence of changes in prevailing VAT rates shall not constitute grounds for termination of the Agreement by the Client pursuant to this Clause.

21. Property Rights

The EQA name and logo is the intellectual property right of EQA (Ireland) Limited and neither the name nor the logo may be used or reproduced without permission.

All non-personal data collected, obtained, procured or created by EQA in performance or connected with any antecedent contract between the Client and EQA shall be the intellectual property right of EQA (Ireland) Limited and EQA (Ireland) Limited reserves the right to control and share such data in compliance with all relevant legislation howsoever it may choose.

22. Data Protection – Privacy Policy

Any personal information the Client supplies to EQA when the Client enters into any contract or agreement with EQA will be used in accordance with this Privacy Policy, with our website's Privacy Statement, a copy of which is available to view at www.eqa.ie, and in accordance with applicable Irish and EU data protection legislation.

EQA reserves the right to modify this Privacy Policy and its Privacy Statement at any time. Such modification shall be effective immediately upon posting of the modified Terms and Conditions and/ or Privacy Statement on www.eqa.ie. Accordingly, the Client's continued access or use the Services contracted for is deemed to be the Client's acceptance of the modified Terms and Conditions and/ or Privacy Statement. EQA reserves the right to share non-personal information with third parties.

Upon completing any application or quotation form, EQA may receive personal information about the Client. Personal information includes the Client's name, address, email-address, telephone and mobile number. When a Client provides personal information to EQA, EQA may be contacted at such e-mail address as nominated by EQA in its Privacy Statement.

Occasionally EQA may contact clients by post, e-mail or telephone in respect of the Services provided by it. EQA may, unless instructed otherwise, contact clients by post, e-mail, or telephone with details of Services that we feel may be of interest to them.

Some services may require the Client to supply certain personal information. In consideration for the use of the Services, the Client agrees to provide true, current, complete and accurate information about itself as prompted to do so by the Services, and to maintain and promptly update this information as required to keep it true, current, complete and accurate.

If the Client provides any information that is untrue, not current, incomplete or inaccurate, or EQA has reasonable grounds to suspect that such information is untrue, not current, incomplete or inaccurate, EQA has the right to suspend, withdraw or stop the Services.

All information requested on original sign-up shall be referred to as "Registration Information". This Registration Information will be retained by EQA for no longer than is necessary to provide the Services to the Client or as otherwise required by law.

EQA agrees to use the Registration Information only for the purpose of supplying the Services to the Client.

EQA reserves the right to disclose the Registration Information if required to do so by law, or if it believes in good faith that any such disclosure is reasonably necessary; to enforce these Terms and Conditions; to respond to any complaint received regarding the rights of third parties; or to protect the rights, property or personal safety of EQA, its clients or the public.

EQA or its business partners may with the Client's expressed permission, from time to time, send the Client e-mails regarding its services.

Using the email addresses provided on registration, EQA may contact the Client regarding the Client's primary email.

23. General Provisions

Subject to any provisions contained herein to the contrary, this Agreement is between EQA and the Client and accordingly, no other party shall have any right to enforce any of its terms.

The Client acknowledges that, as an approved certification body by the relevant Regulatory Bodies, EQA may be inspected by the Regulatory Bodies in the course of the performance by EQA of its obligations to the Client under the Contract. The Client hereby consents to the Regulatory Bodies accompanying EQA in the course of its performance of its obligations to the Client under the Contract by way of witness inspection.

A waiver by EQA of any breach of the Agreement by the Client or the acquiescence of EQA in any act (whether of commission or omission) which but for such acquiescence would be a breach as aforesaid shall not constitute a general

waiver of the applicable term, provision or condition or of any subsequent act by the Client which is contrary thereto. Any such waiver by EQA shall be in writing.

If any part of these Terms and Conditions is deemed by a court of competent jurisdiction to be void and unenforceable, such ineffectiveness or unenforceability shall not affect the validity or enforceability of any other part of these Terms and Conditions.

The parties will comply with the additional terms and conditions (if any) set forth in the Official Quote. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

This Agreement is not assignable or transferable by the Client except with the other party's prior written consent; provided that, a party may transfer and assign its rights and obligations under this Agreement without consent to a successor to all or substantially all of its assets or business to which this Agreement relates.

This Agreement, including any attached Official Quotes or Appendices, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement, and all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.

No agency, partnership, joint venture, or employment is created as a result of this Agreement. Any notices in connection with this Agreement will be in writing and sent by priority mail, or major commercial rapid delivery courier services to the address specified on the Official Quote (or such other address as may be properly specified by written notice hereunder).

24. Governing Law and Jurisdiction

The Agreement is governed by the laws of the Republic of Ireland. Save as set out at Clause 17 herein, any dispute and/or claim relating to the Agreement shall be governed by and construed in accordance with the laws of the Republic of Ireland and the parties submit to the exclusive jurisdiction of the Courts of the Republic of Ireland.