



Quality Leisure Management Ltd Terms and Conditions of Business

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Quality Leisure Management Ltd is a wholly owned subsidiary of PHSC Plc

PHSC plc

1 Interpretation

In these Conditions:

"QLM" shall mean Quality Leisure Management Limited, one of PHSC plc group of companies.

"The Plc" shall mean PHSC Plc.

"The Client" shall mean any person whose order for Services is accepted by QLM.

"The Work" shall mean the assignment, training, consultancy advice, auditing or any task required to be performed"

"Conditions" shall mean the standard terms and conditions set out in this document and (unless the context otherwise requires) includes any special terms and conditions mutually agreed between QLM and the Client.

"The Services" or **"Services"** shall mean the Services, work and materials which QLM is to supply, provide or carry out in accordance with these Conditions.

"Document" includes, in addition to a document in writing, a map, plan, design, drawing, picture or other image, or any other record of any information in any form. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time. Note: Except where there are statutory provisions to the contrary, QLM shall be entitled to destroy all material (including paper and electronic records) relating to work carried out: for a current Client, after a period of two years; and in the case of a Client who has commissioned no work within the previous twelve months, upon the expiry of that period.

2 Instructions

The Client shall provide written instructions of the Services to be undertaken by QLM prior to any works commencing. QLM shall accept any instructions by replying in writing with a description of the works.

Where a Proposal has been made by QLM, acceptance of the Proposal by the Client in writing shall constitute an instruction to begin work. Any variation by the Client of his original instructions shall be provided in writing and subject to agreement by both parties.

A proposal by QLM does not constitute an offer and QLM reserves the right to withdraw or revise any proposal at any time prior to QLM receiving a written acceptance of the proposal.

The Proposal (where applicable) or written instructions from a Client, along with these conditions shall constitute the entire contract between the parties and shall supersede any prior contracts or understandings.

A proposal expires 90 days after the date that the proposal was sent to the client unless another expiry date is written on the proposal.

The Client undertakes to provide such facilities, instructions and information as necessary to enable employees and agents of QLM to function without risk to safety or health, while on the Client's premises.

The Client undertakes to make prior notification of any special personal protective equipment that PHSC's employees may reasonably require during the performance of a contract; QLM shall not be held liable for delays resulting from any failure to notify QLM of these requirements.

3 Scope of Work to be undertaken

The scope of works shall be included in the instructions from the Client or in QLM's Proposal. The Client shall provide adequate access, facilities, assistance and information on his premises to enable the Services under the contract to be carried out economically and safely.

The Client shall comply with all legislation in force at that time regarding the health and safety at work of employees and others. QLM reserves the right to use its appointed and approved associate consultants or sub-contractors in providing the Services in accordance with the specification set out in the proposal or other company literature.

QLM shall be entitled to assign or transfer the Contract and/or any rights hereunder at any time. The Client may not assign or transfer the Contract and/or any rights herein with QLM's written consent.

4 Time

The Services commissioned by the Client shall be carried out and the results thereof submitted by QLM to the Client with all due speed and in compliance with the requirements of all relevant statutes and other regulations which may from time to time be in force.

Unless agreed with specific contracts, delivery dates are approximate only and time for delivery shall not be of the essence and may be dependent on analytical methodology or project constraints.

QLM will provide an estimate of the time required for any specific commission. It should be noted however that time limits, where provided, are estimates.

QLM will endeavour to meet all estimated times and assumes there will be no 'waiting time' on-site not occasioned by QLM.

In the event of delays imposed upon QLM by the action of the Client or third parties in the same areas at the same time, QLM will not be responsible for the consequences of any resulting overrun and reserves the right to charge, at cost, for any labour and associated expenses.

Where the whole work programme is interrupted by circumstances beyond the Client's or QLM's control, interim payments to the value of the work completed shall be payable under QLM's normal invoicing terms. Further, where the work is interrupted for a period of more than sixty days, QLM reserves the right to increase its price on that part of the work outstanding.

5 Analysis & Testing

Where scientific analysis and testing is required, it will be carried out in accordance with statutory or British Standard methodology.

Where there are no statutory or British Standard methods, analysis or testing will be carried out according to a method considered by QLM to be both appropriate and based on recognised methodology.

6 Office facilities

The Client shall make available, at no charge, suitable office facilities for the Consultant throughout the period of the assignment if required.

Facilities shall include, where necessary, access to mains power and to a wi-fi network.

7 Standard Fee Structure

The fee structure is set out in the Proposal. Day rate fees are based on an eight-hour day (including one hour for lunch) between 09:00-17:00 (including travel) and the fee is pro rata in respect of full additional hours completed over and above eight.

Where travelling time is charged additionally, this will be detailed in the proposal.

The minimum unit of chargeable time is half of one hour. Any additional work may be charged at an hourly rate.

Company fees are reviewed annually to take into account inflation. The Client shall receive at least one month notice of any increase in fees.

Litigation fees are in line with the prevailing rates set out in Expert Witness Fees published by the Society of Expert Witnesses and reflect the fees charged by the HSE under the Fees for Intervention Regulations.

All charges quoted for the Services specified in the proposal are exclusive of Value Added Tax, for which the client shall be additionally liable at the applicable rate.

8 Expenses

QLM shall be entitled to recharge to the Client all necessary and reasonable business expenses incurred in the provision of the agreed Services.

Travel, subsistence and out of pocket expenses necessary for the execution of the project shall be charged to the Client at cost. Rates will be specified in the proposal.

- Travel business miles shall be charged as specified in the proposal. Other travel costs will be charged at cost to QLM.
- Course programme materials supplied will be charged as specified in the proposal.
- Laboratory fees recharged at cost + 15%
- Where commissions are confirmed at least three months in advance, QLM will restrict overall expenses to a set figure and a discretionary discount on consultant's time of 10% may be applied.

9 Payment

Payment shall be based upon the brief or Proposal estimate agreed in writing supplied prior to the commencement of work. Unless otherwise stated, any cost estimate presented in a proposal is for budgetary purposes only.

Any variation in the Client's original instructions resulting in additional work shall be payable at a rate as may be agreed between QLM and the Client and confirmed in writing.

Payment Schedule

- If specified in the proposal, QLM reserves the right to invoice for half of the total net project fee at the start of the work, or at the latest a point in time agreed with the Client at the start of the Project as the project mid point.
- Unless otherwise agreed in writing, payment for all invoices is due no more than 14 days from the date of the invoice and strictly net.
- The time of payment of QLM's charges shall be of the essence of the contract and QLM reserves the right to charge interest on overdue accounts.
- Where fees are not settled within the agreed period, they may, in line with UK legislation under EU Directive for the Regulation of Commercial Debt, be subject to a supplement not exceeding 8% per 14-day charging period.
- QLM reserves the right to invoice the Client for laboratory fees on the day the works are performed by the laboratory.
- QLM reserves the right to invoice the Client for data purchase fees or similar on the day the goods are purchased by QLM.
- Invoices for training courses, where issued before the event, are due for settlement before the date of the course and the delegate(s) may be refused attendance until such time as payment has been received.
- Value added tax shall be charged at the current rate.

QLM reserves the right to withhold undertaking any Services for the Client until payment of all sums due from the Client has been made and/or to require payment in full in advance before undertaking further Services.

10 Cancellation or re-scheduling

QLM shall be entitled to levy cancellation or postponement fees, per consultancy or training day that has been cancelled or postponed, in line with the following scales:

- over four weeks' notice - 0% of full fee;
- three to four weeks' notice- 25% of full fee;
- above two but less than three weeks' notice- 50% of full fee;
- one to two weeks' notice - 75% of full fee;
- below one weeks' notice -100% of full fee.

Contracts which are paid in advance are not refundable. Any additional costs (e.g. non-recoverable travel/accommodation, laboratory or equipment hire costs) including administration, arising from cancellation or re-scheduling shall also be charged.

11 Warranty and limitation of liability

QLM warrants that it will perform the agreed duties with reasonable care and skill and, as far as reasonably possible, in accordance with generally accepted industry standards and within the times referred to in the proposal.

All projects are undertaken in good faith and recommendations made on the basis of information known to QLM at that time. Although QLM will use its best endeavours to ensure accuracy, achievement depends, inter alia, on the effective co-operation of the Client's staff and on the information submitted to QLM.

QLM shall have no liability to the client for any loss, damage, costs, expenses or other claims for compensation from any document of instructions received from the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or from arising from their late arrival or non-arrival, or any other fault of the Client.

The Services are provided and advice and results of analysis are given on the basis of, and in strict reliance upon, all material facts and information having been accurately disclosed to QLM by the Client and the Client agrees to confirm all relevant instructions, data and information in writing.

QLM shall not be liable for any loss or damage arising either from the Client failing to disclose such facts and information or from the Client's failure to follow any advice or recommendation given by QLM.

The results of any test, analysis or appraisal of goods or samples address the items submitted only and are not to be regarded as representative of any larger population from which the goods or samples were taken.

In consequence, all Services are provided, and reports are prepared on the basis:

- there is no responsibility to any person or body other than the Client.
- that no statement in any report or letter, other than the proposal and anything incorporated into it, is deemed in any way to be or give rise to a representation, undertaking, warranty or contractual condition.

Except in the case of death or personal injury caused by QLM's negligence, or as expressly provided for in these Conditions, QLM shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special, or inconsequential loss, damage, costs, expenses or other claims (whether caused by the negligence of QLM, its servants or otherwise) which arise out of or in connection with the Contract.

This shall not exceed the amount of QLM's charges for the provision of the specified Services, except as expressly provided for in these Conditions.

In so far as a proposal or report contains any forecast as to the cost of works or goods outside of the scope of the proposal, such a forecast shall not impose any obligation on QLM to carry out such works nor supply such goods at the cost or at all.

If any item is damaged by a servant of QLM during the performance of a service, QLM's liability (if any) shall be limited to the lower of the cost of replacement of the item and the cost of rectification of such damage. In this context QLM will in no circumstances be under any liability in respect of any claim or demand whatsoever for loss of profits, loss of use, economic or consequential loss, property damage, liability for penalties or other liability assumed by the Client under any contract.

The results of any work undertaken by QLM are determined solely by the professional analysis undertaken by QLM's staff on each contract respectively and any forecast by QLM of the results is an estimate only and QLM is entitled to be paid its fee agreed for the contract irrespective of the results or conclusions reached in the report to any contract.

Although every care is taken by QLM in responding to requests for information and advice by telephone, email, facsimile facilities, or any electronic data-transfer method, no liability can be accepted where advice given is distorted in transmission by any such media.

Where commissions involve personal or criminal litigation and in the light of the judgment in Jones V Kaney, it should be noted that a consultant's professional indemnity is limited to £2M. Increased liability may be provided but may incur additional cost and is on a case-by-case basis.

Any claim by the Client which is based on any defect or failure in the provision by QLM of the Services hereunder shall be notified by the Client to QLM in writing within 30 days from the date of completion of the Services or (where the defect or failure was not apparent on reasonable inspection) from the date of discovery of the defect or failure. If the Client does not notify QLM accordingly then QLM shall have no liability for such defect or failure and the Client shall be bound to make payment on the terms hereof.

12 Non-Destructive Testing

When non-destructive testing (NDT) services are undertaken by QLM, the testing and interpretation of results will be carried out in accordance with relevant codes or standards, or ones that have been drawn up and agreed by the Client.

Where QLM is working to a Client's code or standard, this must be made available by the Client together with all relevant information for testing, in sufficient time prior to the commencement of the testing.

QLM draws attention to the fact that most NDT techniques are complementary to each other. Whilst the method or technique used may give considerable assurance, there always remains the possibility that some imperfections or defects remain undetected at the time of testing.

The factual results and any conclusions or comments contained in any test report are given in good faith based on information supplied by the Client and derived from the testing, but there may be other factors involved of which QLM is not aware.

Accordingly reports, conclusions and comments are provided solely for the consideration and approval of the Client.

13 Confidentiality

QLM undertakes that it will not disclose to any third party, without the Client's express consent, any confidential information concerning the Client, or QLM's staff or people being represented, that may have been obtained during the course of this contract.

This information shall not, however, apply to any information which:

- is in the public domain, other than through a breach of this contract
- has been lawfully received by QLM from a third party without restriction
- was already in QLM's possession at the date of this contract, or
- was independently developed by QLM without the use of the Client's confidential information.

14 General

A notice required by either party to the other under these conditions shall be in writing addressed to the other party at the registered office or principle place of business.

Any dispute arising under or in connection with these conditions or the provision of the specified Services which cannot be settled amicably will in the first place be referred to a senior management representative chosen by each party.

If there is still failure to settle the dispute, the dispute shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated by the application of either party by the President for the time being of the Chartered Institute of Arbitrators.

The decision of that arbitrator shall be final and binding on both parties.

15 Severability and/or Termination of the Contract

The Client may not terminate the contract without the written consent of QLM, which may be subject to such terms as in QLM's absolute discretion.

The Client shall recompense QLM for all loss it may suffer as a result of termination. QLM may terminate the contract forthwith without prejudice to any other rights QLM may have if, inter alia, the Client commits a breach of contract or fails to make a payment to QLM within the time specified for any amount due to QLM under the contract.

In the event that any part of these terms is made void by any enactment, regulation or the decision of a competent court, the remaining parts shall continue in full force and effect.

16 Intellectual Property and Copyright

Nothing in these Conditions, whether express or implied, shall entitle the Client to use any patent, copyright, design, trade mark, service mark or other industrial or intellectual property rights of QLM without the prior consent of QLM in writing. Unless expressly stated to the contrary, all correspondence, and training notes etc. remains copyright of QLM. The Client shall only be entitled to copy (in whatever media) such material for internal use as sanctioned by QLM.

17 Data Protection

In connection with work activities, QLM may hold information relating to named individuals in various media.

Such data will be used in accordance with the purposes for which QLM is registered under the Data Protection Act 1998. The client's name may be used for promotional purposes but such reference will not include the name of individuals.

18 Staff

If an employee of QLM is directly or indirectly engaged by a Client in any capacity on a contract of employment within 12 months of carrying out a consultancy or training assignment for the Client, the Client shall be liable to pay an Engagement Fee equivalent to 20% of annual salary.

19 Waiver

No waiver by QLM in respect of any breach by the Client of these Conditions shall operate as a waiver in respect of any subsequent breach.

20 Disclaimer

The following disclaimer is used in company reports and applies to all reports, letters, e-mails and other methods of reporting irrespective of whether the disclaimer is included in the published document.

'QLM has prepared this report with all reasonable skill, care and diligence within the terms of the Contract with the client, incorporating QLM's General Terms and Conditions of Business, and taking account of the manpower and resources devoted to it by agreement with the client. QLM disclaims any responsibility to the client and others in respect of any matters outside the scope of the above. This report is confidential to the client and QLM accepts no responsibility of whatsoever nature to third parties to whom this report, or any part thereof, is made known. Any such party relies upon the report at their own risk.'

21 English Law

This contract shall be governed by and construed in accordance with English Law and shall be subject only to the jurisdiction of the English Courts.