



## **4QL Terms and Conditions**

*Standard terms and conditions of trading with 4QL Limited.*

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# **4QL Commercial Terms and Conditions**

## **1. Definitions**

<b>4QL</b>	The company of 4QL Limited, registered in Scotland number SC216004.
<b>Customer</b>	The individual or organisation purchasing goods or services from 4QL. A Reseller is also a Customer for the purposes of this agreement.
<b>Domain Name</b>	Name, allocated by the appropriate regulatory authority, by which an Internet service may be identified.
<b>End User</b>	Any individual or organisation that uses the goods or services.
<b>Internet Service</b>	A service that uses the Internet or relates to the Internet. This includes web sites, Email, search engine optimisation and so on.
<b>IP Address</b>	The numeric address used to identify a connection to the Internet.
<b>Period of Service</b>	The period of time over which the service is rendered to the Customer.
<b>Products</b>	Any goods or services that are being sold by 4QL Limited to the Customer.
<b>Reseller</b>	An individual or organisation authorised by 4QL to resell its goods or services. Includes Value Added Resellers
<b>Search Engine</b>	A service operated by separate organisations on the Internet that assist users to locate information and other resources on the Internet (e.g. Google)
<b>Web Hosting</b>	An Internet Service where 4QL or its partners provides the equipment and others services necessary to publish a web site on the Internet.

## **2. Products**

In exchange for payment 4QL agrees to supply Products to the Customer.

### **2.1. Goods**

Where the supply is for tangible goods, title in these goods will only pass to the Customer after full payment for the goods is received.

### **2.2. Services**

Services are supplied for a specific Period of Service.

The Service may be renewed on payment of the renewal invoice which will be issued not less than 30 days before the end of the Period of Service.

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### 3. Acceptance

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- a. If the Customer uses or allows to be used the products in any way it will signify acceptance of this agreement in full.

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### 4. Variations

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- a. 4QL may change this agreement at any time.
- b. If a change is made the modified agreement will be posted on the 4QL web site ([www.4ql.co.uk](http://www.4ql.co.uk)).
- c. 4QL will attempt to email a notification of any changes to the Customer but failure to receive the notification will not invalidate the changes.
- d. The Customer should notify 4QL within 30 days of the date of the change if any changes made are unacceptable. If agreement cannot be reached the Customer may terminate this agreement.
- e. Variations to this agreement may only be made in writing and must be signed by a director of 4QL.

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### 5. Payments

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- a. Where an agreed credit account is active payments must be received in cleared funds by 4QL within 30 days of the invoice date.
- b. If there is no agreed, active credit account then payment must be received immediately on 4QL issuing an invoice to the Customer and before any work or service commences or before any goods are supplied.
- c. Note that 4QL does not issue statements.
- d. Invoices will normally be delivered electronically. Printed copies of an invoice will only be provided on request.
- e. Interest at 5% above the current base rate (as published by the Bank of England) will be charged on any balance older than 30 days from the date of the invoice.
- f. Unless otherwise agreed in writing payments received will be allocated against the oldest debt.

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### 6. Legal Status

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- a. These Terms and Conditions shall be governed by the Law of Scotland and 4QL and the Customer agree to the jurisdiction of the Scottish Courts in relation to any issue connected herewith.
- b. If any part of this agreement is found to be invalid or unenforceable it will not invalidate any other part of the agreement.
- c. If any provision of this agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired thereby.
- d. A failure by any party to exercise or delay in exercising a right or power conferred upon it in this agreement shall not operate as a waiver of any such right or power.

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### 7. Liability

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- a. Whilst 4QL will at all times make every effort to ensure the performance and delivery of Services that are directly within its control, 4QL gives no warranties of any kind, expressed or implied for services provided to the Customer. 4QL disclaims any warranty or fitness for a particular purpose. This includes loss of business, custom, loss of data and all service interruptions unless otherwise stated by 4QL or agreed with the customer in writing.
- b. The Customer will have no recourse to 4QL if a Customer's account is in arrears; 4QL has suspended or withdrawn services as a result of the customer being in

breach of any of the terms in the use of the services; is subject to a wind-up order, has been placed into receivership, or ceased trading.

## 8. Termination

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- a. These terms and conditions will be terminated if any of the following happen:
  - i. On material breach of this agreement.
  - ii. Bankruptcy of customer
  - iii. 30 days notice of cancellation of this agreement in writing.
  - iv. Non-payment of renewal invoice.
  - v. Failure of the Customer to comply with the Acceptable Use Policy.
- b. If the agreement is terminated early for any reason there will be no refund of any fees paid.

## 9. Indemnity

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The Customer agrees to indemnify and hold 4QL and its officers, directors, employees and agents harmless from and against any loss, damage, liability, cost (including legal costs on a full indemnity basis) or expense of any kind that the 4QL may incur in connection with a third party claim or otherwise, in relation to your use of any of the Products.

## 10. Internet Services

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### 10.1. Domain Names

#### 10.1.1. New Domain Registration

- a. 4QL or its partners or agents will use all reasonable endeavours to register a Domain Name requested by the Customer. However, 4QL does not accept any liability whatsoever in failing to register such Domain Names.
- b. Normally a new Domain Name is registered in the Customer's name. However, if the details given by the Customer are not sufficient to validly register in their name the Domain Name will be registered in 4QL's name but will be transferred to the Customer at the Customer's request. Any fees incurred for such a transfer must be paid by the Customer.

#### 10.1.2. Domain Name Transfers

- a. Transfers to or from 4QL are carried out free of charge where 4QL (or its partners) holds an account with a recognised registrar or naming authority
- b. 4QL will transfer any domain without undue delay but generally within 5 working days.
- c. Unless otherwise agreed all outstanding sums due to 4QL by the Customer must be settled before a domain will be transferred from 4QL.

#### 10.1.3. Domain Name Renewals

- a. Where 4QL (or its partners) is the billing contact with a recognised registrar or naming authority and provided that the Customer continues to rent services from 4QL, 4QL will automatically renew the domain registration when it becomes due.
- b. Where the services are no longer being rented from 4QL Domain Name registrations will be allowed to lapse when they become due.

#### 10.1.4. Amending Domain Name Registrants Details

- a. If 4QL (or its partners) is the administration contact for a domain name the Customer will when appropriate request 4QL to amend registrants' details accordingly.

- b. Any charges incurred for these changes must be paid by the Customer.

#### 10.1.5. Use of Domain Names

- a. The registration and use of domain names on the internet are subject to the terms and conditions of the relevant naming authority/registrar with whom the domain name have been registered.
- b. For convenience a list of relevant authorities is given here but this list is not guaranteed to be accurate or complete.

**.co.uk, .ltd.uk, .org.uk, .plc.uk, .me.uk**  
<http://www.nominet.net/>

**.com, .net, .org**  
<http://www.info/faqs/general>

#### 10.2. Acceptable Use Policy

- a. Acceptable Use Policy below defines the actions which 4QL considers to be abusive, and thus, strictly prohibited. In using the Internet Services you agree to these conditions. Should any action be taken by 4QL in the suspension or the withdrawal of Services the Customer shall forgo any claims against 4QL in respect of refunds for unused Services and any performance claims against 4QL.
- b. The examples named are non-exclusive, and are provided for guidance to the Customer. If you are unsure whether any contemplated use or action is permitted, please ask for assistance.

##### 10.2.1. General Conduct

- a. Customers are prohibited from transmitting on or through any Internet Services, any material that is, in 4QL's sole discretion, unlawful, obscene, threatening, abusive, libellous, or encourages conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any local, state, national or international law. 4QL's Services may only be used for lawful purposes.
- b. Transmission, distribution, or storage of any information, data or material in violation of UK, European, or other International regulation or law, or by the common law, is prohibited. This includes, but is not limited to, material protected by copyright, trademark, trade secret, or any other statute.
- c. If the Internet Service is used to sell goods (e-commerce) then the Customer must ensure that they comply with the **Consumer Protection (Distance Selling) Regulations 2000**.
- d. Customers are prohibited from using the Internet Services for any material likely to degrade the service to other users.
- e. Customers must not use the Internet Services in a manner that causes the IP Address of the Internet Services to be black listed. This includes but is not limited to:
  - a. Operating an open relay mail server.
  - b. Sending messages that contain viruses. Customers must make sure that they maintain adequate ant-virus software to prevent this happening.
  - c. Making excessive submissions to Search Engines or using any technique likely to result in the Search Engine barring the IP address of the Internet Service.

##### 10.2.2. Security

- a. Customers may not use the Internet Service to attempt to circumvent user authentication or security of any host, network, or account.
- b. This includes, but is not limited to, accessing data not intended for the Customer, logging into a server or account the Customer is not expressly authorised to

access, password cracking, probing the security of other networks in search of weakness, or violation of any other organisation's security policy.

- c. Customers may not attempt to interfere or deny service to any user, host, or network. This includes, but is not limited to, flooding, mail bombing, or other deliberate attempts to overload or crash a host or network.

### 10.2.3. Shared Servers

- a. The Customer will ensure that all website content has been adequately tested prior to publication to a shared server. A website that interferes with other users of the server or makes unreasonable demands on the server's resources will be suspended. Normal service will only be resumed once the Customer has identified and rectified any anomalies within the website. 4QL at its discretion may also make a charge to the Customer for the work involved by 4QL in identifying the abuse of the shared server's resources.
- b. Customers are not authorised to load or install any application or component of any description to a shared server.

### 10.2.4. Law Enforcement co-operation

- a. 4QL will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in the investigation of suspected criminal violations. Customers or Users who violate systems or network security may incur criminal or civil liability.

### 10.2.5. E-mail and other types of Internet-based message distribution

- a. Email sent by the Customer must comply with **Privacy and Electronic Communications (EC Directive) Regulations 2003**.
- b. Customers who do not comply with the **Privacy and Electronic Communications (EC Directive) Regulations 2003** may be subject to any or all of the following:
  - A warning from 4QL, via E-mail or telephone.
  - Removal of DNS for the advertised or originating site.
  - Temporary shutdown of the server or a block on outgoing mail.
  - Permanent disconnection of service.
- c. Infringements of the **Privacy and Electronic Communications (EC Directive) Regulations 2003** include, but are not limited to:
  - Attempting to transmit an e-mail via 4QL's services from a domain name that is not known on the 4QL network.
  - Sending mail to users who have not specifically requested to receive such mail, including opt-out mailing lists.
  - Sending, being involved in sending, or employing a third party to send mail which advertises or mentions a site hosted at 4QL to users that have not specifically requested this mail.
  - Forging of message headers to mask the originator of the message.
  - Harassment, whether through language, frequency, or size of messages, is prohibited.

### 10.3. Service Renewal

- a. The Internet Service will be renewed automatically at the end of the Period of Service provided payment is received in accordance with this agreement.
- b. A renewal fee will be invoiced to the Customer not less than 30 days before the end of the Period of Service.
- c. Upon receipt of the renewal fee a new Period of Service will be started to run consecutively with Period of Service being renewed.

- d. If payment is not received before the start of the next Period of Service then the Internet Service will be automatically suspended for a period of 30 days (Suspension Period).
- e. The Customer may re-activate the Internet Service during the Suspension Period on payment of all outstanding invoices for the service and a re-activation fee. Note that the new Period of Service will always start from the end of the last Period of Service regardless of when payment is received.
- f. If an Internet Service has not been re-activated before the expiration of the Suspension Period it will be permanently cancelled and all the data associated with the service will be deleted. All Domain Names associated with the service will be allowed to lapse when their renewal date is reached.

#### 10.4. Period of service

- a. The Customer may choose a Period of Service of either 3 calendar months or 1 year when starting or renewing a service.
- b. All charges for the Period of Services will be invoiced in advance.
- c. The charge for the Internet Service will remain fixed for the duration of the Period of Service unless the services provided are changed.

#### 10.5. Changes to Internet Services

- a. The services included in the Internet Service may be changed at any time.
- b. If the change to the services results in an increased charge then the Customer will be credited with the pro rata value for the number of whole calendar months remaining in the current Period of Service and a new Period of Service will be started from the date of the change. (Note that in this case it means that the renewal date for the Internet Service will change.)
- c. If the change to the services results in a reduced charge then the new charges will only apply from the end of the current Period of Service when the Internet Service is renewed.

#### 10.6. Continuity of service

- a. 4QL will use reasonable endeavours to ensure that the Internet Service is provided without interruption or failure.
- b. Since the Internet Service depends on a number of other providers over which 4QL has no control, 4QL will not be liable in any way whatsoever for the failure or interruption of the service.

#### 10.7. Web site Data

- a. 4QL makes a daily security backup of all the web site data.
- b. While 4QL will use all reasonable endeavours to ensure that the website data is kept secure against failure of the system, 4QL will not be liable for any loss that may be incurred as a consequence of that data being lost.

### 11. Resellers (Including Value Added Resellers (VARs))

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The terms and conditions for Resellers apply in addition to the other terms and conditions in this agreement.

#### 11.1. General

- a. Resellers must be approved by 4QL before offering to sell 4QL's Products.
- b. A Reseller is given the non-exclusive right to resell 4QL's Products to its own customers.
- c. The Reseller shall conduct business in its own name and shall not represent itself as an employee or agent of 4QL.

**11.2. Non-Disclosure**

- a. The Reseller shall not disclose any proprietary information that is revealed to it. This information shall include, but not be limited to, the provisions outlined in this agreement, product and services information, pricing (other than End User pricing), source code, company practices, methodology and procedures. This condition will survive the termination of this agreement.
- b. The Reseller further agrees to not distribute, decompose, disassemble, decode or reverse engineer any 4QL program delivered to the Reseller or any portion thereof without prior written approval of 4QL. This condition will survive the termination of this agreement.

**11.3. Non-Transferable**

- a. The VAR may not assign or transfer this agreement, in whole or in part without the prior written consent of 4QL.
- b. In the event that the VAR contemplates whole or partial sale of its business, ownership change, or a change in its jurisdiction, the Reseller shall notify 4QL in writing no less than 60 days prior to the effective date of the event.

**11.4. Period of Agreement**

- a. The period of this agreement is 12 months from the date of execution by 4QL.
- b. This agreement shall be continuously renewed every 12 months unless the Reseller notifies 4QL in writing 60 days prior to the expiration date.

**11.5. Termination**

- a. Either party may terminate this agreement at any time by giving 60 days notice in writing to the other party.
- b. Upon termination of this agreement 4QL may, at its sole discretion, approach the Resellers customers who have been sold any of 4QL's Products in order to either continue the supply of the Products directly or to transfer the Products supply to another Reseller.

**11.6. Use of 4QL's Products**

- a. In order to best promote the Products the Reseller must use the Products.
- b. The Reseller must promote the 4QL Products using an OctEportal website.

**11.7. Trade Marks**

- a. The Reseller may use the trade marks of 4QL's Products to promote those Products to the Reseller's customers.
- b. All uses of the 4QL's trade marks must acknowledge 4QL as the owner of these trade marks within the same document, web site or other material that the trade mark is used.

**11.8. Reseller's Customers**

- a. The Reseller must provide 4QL with sufficient details of all customers to whom it supplies the Products so that 4QL can easily make contact with the customer should this agreement be terminated. These details should include, but are not limited to, The Name, Address, Phone Number, Contact Name and Email address of the customer.
- b. The Reseller must notify 4QL promptly of any changes in the details supplied.
- c. The Reseller must make an agreement with its customers that includes all the provisions of this agreement (except those relating to Resellers).

- d. A copy of the Reseller's terms and conditions as they apply to the sale of the Products to its customers must be provided to 4QL before the Reseller status is granted.
- e. The Reseller must notify 4QL promptly of any changes to its terms and conditions as they apply to the Products.
- f. At the Reseller's customer's request 4QL may allow the Products to be sold to the customer either directly from 4QL or through another Reseller. The decision about whether this will happen or not rest solely with 4QL but will be made in consultation with the Reseller.

**11.9. Training**

- a. It is the Reseller's responsibility to ensure that they have a full and complete knowledge of the Products.