

TERMS AND CONDITIONS OF BUSINESS – From 1 January 2009

CEEQUAL Ltd

Registered Office: Classic House, 174-80 Old Street, London EC1V 9BP

Tel: +44 (0) 207 549 3302 - Fax: +44 (0) 207 253 0523 – Email enquiries@ceequal.com – Web www.ceequal.com

A private limited company registered in England No. 4568928

1 **DEFINITIONS**

- 1.1 **CEEQUAL shall mean CEEQUAL Limited and where the context permits, its employees, agents or subcontractors.**
- 1.2 **'The Applicant'** shall mean, any person or persons, firm or corporate body that applies for a CEEQUAL award.
- 1.3 **'Application'** shall mean work related to the specific CEEQUAL award applied for.
- 1.4 **'Agreed'** shall mean agreed between **The Applicant** and **CEEQUAL**.
- 1.5 **'Assessor'** shall mean that person provided by the applicant to conduct the scoping out and assessment(s)
- 1.6 **"Verifier"** shall mean that person provided by CEEQUAL to verify the scoping and assessment(s).
- 1.7 **"Schedule of fees"** shall mean that schedule of fees as applicable to various project or contract values as shall be issued by **CEEQUAL** from time to time and as shall be current at the time of the **Application** or variation to the **Application** under consideration.

2 **GENERAL**

- 2.1 These conditions shall apply to all work undertaken by **CEEQUAL** for **The Applicant** and are overridden only by any explicit other conditions related to the **Application** which have been agreed in writing between **The Applicant** and **CEEQUAL**
- 2.2 **CEEQUAL** will conduct its business in accordance with professional standards and maintain a high standard of independence, objectivity, integrity and confidentiality.
- 2.3 **CEEQUAL** provides information, advice and makes awards in good faith based upon information available at the time. **CEEQUAL** accepts no liability for the consequences of its information, advice and decisions in respect of awards whether direct or indirect.
- 2.4 The failure by either party to enforce at any time or for any period any one or more of the terms and conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.
- 2.5 Any disputes or claims shall be governed by and construed in accordance with English law and the jurisdiction of the English courts.
- 2.6 All unresolved disputes between the Parties shall be referred to arbitration in London before a single arbitrator to be appointed, in default of agreement otherwise, by the person for the time being of the President of the Institute of Arbitrators. Both parties also agree that all disputes arising with respect to this contract will be arbitrated upon within the English legal system.
- 2.7 **CEEQUAL** reserves the right to decline an application without being required to give a reason.

3 **FEES**

- 3.1 **The fees payable by The Client shall be in accordance with CEEQUAL's Schedule of fees** current at the date of application, subject to 3.2. below
- 3.2 CEEQUAL may at all times apply an adjustment for inflation to the **of fees** where such fees are for future work, such adjustment to be in line with RPI. **Schedule**
- 3.3 Any variations to the application, whether a change in the type of award applied for or an escalation in the project value, shall be agreed in writing by **CEEQUAL** and **The Applicant** and **CEEQUAL** will adjust the fee in accordance the schedule of fees for awards current at the date the variation is agreed. CEEQUAL will not normally agree to a reduction in fees in the event of a reduction in project value.
- 3.4 The project value shown on the **Schedule of fees** shall, except in the case of a Design Only award, be the value of civil engineering content at contract award, unless there is a significant escalation of contract value before assessment takes place. For Design Only awards or Whole Project Awards applied for early, the project value will be taken to be the engineer's estimate of the construction contract value.
- 3.5 The fees exclude the time and fees of the **Assessor** which are entirely the responsibility of The **Applicant**.
- 3.6 In the event of delay to verification(s) that is past the date shown on the original application by a period in excess of twelve months CEEQUAL reserves the right to increase the amount of the fees related to said verification(s) to the amount calculated by application of the appropriate proportion to the total fees indicated in the **Schedule of fees** current at the date of the delayed verification(s).
- 3.7 Unless otherwise stated in the **Application** all transactions will be in Pounds Sterling. Both parties agree to accept this in respect of all invoices and payments. Unless otherwise explicitly provided by an individual **Application**, no account will be taken of any exchange rate fluctuations during the life of the project or award process. Each party accepts as their own responsibility the variation, whether favourable or unfavourable, that they may see in local currency terms in respect of the application.
- 3.8 All quotations issued exclude VAT and local taxes unless otherwise stated. VAT and local taxes will be added at the rate ruling at the date the invoice is submitted.

4 **INVOICING AND PAYMENT TERMS**

- 4.1 For all **Applications** to which the minimum fee applies, except Whole Project Awards with an Interim Award, an invoice for the full amount will be sent on receipt and registration of the application.
- 4.2 For all other **Applications**, except Whole Project Awards with an Interim Award, an invoice for 50% of the amount will be sent on application and an invoice for the balance will be sent approximately six weeks prior to the verification date provided by the **Applicant** on the application form.
- 4.3 For Whole Project Awards with an Interim Award fees will be invoiced in three approximately equal instalments, the first on application, the second and third approximately six weeks prior to the verification dates provided by the **Applicant** on the application form unless other terms have been agreed with CEEQUAL in accordance with Clause 2.1.
- 4.4 In the event of delay to the verification date(s) shown on the application forms (or as subsequently amended in accordance with this clause) the new date must be provided in writing to **CEEQUAL** a minimum of six weeks prior to the previously notified date of verification. If such notification is not received all invoices issued in accordance with Clauses 4.1 to 4.3 above must be paid within thirty days of the invoice date.
- 4.5 In all cases payment must be received in full in advance of **CEEQUAL** commencing work on that stage of the project award to which the invoice relates. Therefore work on verifying the scoping will not commence until the first invoice relating to any application has been paid in full and subsequent verifications will not be commenced until the further invoices (if any) submitted prior to those verifications have been paid in full.
- 4.6 Payment shall be made by the **Applicant** within thirty days of an invoice being submitted by **CEEQUAL**.
- 4.7 In the event of an error or query on the invoice this shall be notified to **CEEQUAL** without delay. A credit note will be issued to correct errors or omissions and payment of the net amount is then due.

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- 4.8 **CEEQUAL** shall be entitled to charge interest on accounts outstanding for more than 30 days and for any sums unjustifiably withheld under clause 4.4 at 2% above the prevailing minimum lending rate of the Bank of England.
- 4.9 In the event of insolvency of the **Applicant CEEQUAL** will be entitled to have a general lien on all goods and property of the **Applicant** that is within **CEEQUAL**'s possession and, following 14 days notice to dispose of such goods and property in such manner and at such prices as **CEEQUAL** thinks fit to apply the proceeds towards sums owing to the **CEEQUAL** by the **Applicant**.
- 4.10 All invoices shall be paid without deduction. **CEEQUAL** does not accept discounting of any description unless agreed in advance in accordance with Clause 2.1
- 4.11 **CEEQUAL**'s Bank details are as follows, where all payments should be made by the **Applicant** unless otherwise agreed:
National Westminster Bank Plc, PO Box 113, Cavell House, 2a Charing Cross Road, London WC2H 0PD
Sort Code 60-40-05 Swift Code NWBKGB2L Bank Account No.32028598

5 OPERATION OF CONTRACT

- 5.1 The **Applicant** shall provide an accredited **Assessor**, who may be a member of the applicant's staff or a sub-contractor of the applicant. **Assessors** must have successfully completed the **CEEQUAL** training course. Details of the courses, including dates, locations and costs, can be supplied by **CEEQUAL** on request and are published by **CEEQUAL** on the website www.ceequal.com. **CEEQUAL** can supply details of qualified Assessors to the Applicant on request, but can play no part in assessing the appropriateness of an **Assessor** or in any commercial arrangements made by the **Applicant** with an **Assessor**.
- 5.2 **CEEQUAL** will appoint a suitable qualified **Verifier** to carry out the work. That appointment and any subsequent change to that appointment shall be entirely at the discretion of **CEEQUAL**.
- 5.3 **CEEQUAL** will give reasonable consideration to any representation made by the **Applicant** concerning the appointment of the **Verifier** but any appointment or change to an appointment shall be entirely at the discretion of **CEEQUAL**.
- 5.4 **CEEQUAL** may appoint an assistant or apprentice **Verifier** or other persons to assist the **Verifier** in carrying out his or her duties. Clauses 5.2 and 5.3 shall also apply to such persons.
- 5.5 The fee includes provision of one copy of the **CEEQUAL** manual, the relevant spreadsheet scoring table, the time and expenses of an accredited **CEEQUAL** **Verifier**, Ratification fees and Award Certificates for all project partners. Award recipients will be invited to receive their award at an appropriate event given by a **CEEQUAL** project partner or at an ICE meeting or Award ceremony or at another suitable event and will be invited to submit material for publication on the **CEEQUAL** website.
- 5.6 The fee also includes a licence to display **CEEQUAL** approved signage relating to the project in respect of which an application has been made at the project site.
- 5.7 All awards will be granted on the basis of the **CEEQUAL** version current at the time of verification or a version no older than that current three years prior to the date of final verification.
- 5.8 Where visits are to be made to site the **Applicant** shall be responsible for obtaining any necessary permission or permit for the **Verifier** or his/her assistants or representatives to have access to all relevant parts of the premises. The **Applicant** shall ensure that the owners or occupiers of the premises have insurances to cover any liabilities that may arise from injury to such persons while on the premises, accidental damage to equipment or property of **CEEQUAL** while on the premises, damage or injury to third parties caused by or resulting from the tests or investigations of **CEEQUAL**.

6 TERMINATION

- 6.1 Other than by virtue of 6.2 or 6.3 below, an award **Application** may only be terminated by either party before completion where the underlying project is cancelled, is aborted, fails to obtain planning approval or is fundamentally changed from that originally conceived. In any other cases of abandonment of an award application by the **Applicant CEEQUAL**'s fees shall immediately become payable in full as if all the award processes had been carried out.
- 6.2 Where an event caused by third party events outside either party's control or influence causes such delay that the purpose of the contract is wholly or significantly destroyed, either party shall be entitled in these circumstances to cancel the remaining portion of the **Application**. In such circumstances the **Applicant** shall not make any further payments of fees but there will be no refund of payments already made (including any payments for that part of the contract that remains unfulfilled) and **CEEQUAL** shall be entitled to recover any additional costs already incurred but not paid for.
- 6.3 **CEEQUAL** shall have the right to discontinue immediately all work for the **Applicant** should he or another person petition for his bankruptcy, or he be declared insolvent, or he be placed into administrative receivership or be generally unable to pay his bills as they become due.

7 COPYRIGHT & INTELLECTUAL PROPERTY

- 7.1 **CEEQUAL** shall retain copyright in all reports, certificates, presentations, manuals or other material delivered in whatever form.

8 CONFIDENTIALITY

- 8.1 **CEEQUAL** agrees to hold all information provided by the **Applicant** confidential where the **Applicant** so specifies, save where such information is known to **CEEQUAL** already, or exists already in the public domain, until, either the information enters the public domain, or **CEEQUAL** is given the same information by a third party, or is released from its confidentiality requirement by **CEEQUAL**, or the **Applicant** is found in breach of contract with **CEEQUAL** by a court of law (including non-payment of account).

9 LIMITATION OF LIABILITY

- 9.1 **CEEQUAL** will exercise all reasonable skill, care and diligence in the discharge of the duties performed and in scoring any application and in making any award. However, **CEEQUAL** will not be liable for any loss or damage, whether direct or indirect, arising from its work or the scoring or any award given.
- 9.2 **CEEQUAL** will not be liable for any damage, loss or expense suffered by the **Applicant** by reason of any delay in carrying out any test, investigation or verification or in issuing any awards, scores, reports or certificates to the **Applicant**.
- 9.3 Without prejudice to other more restrictive limitations elsewhere in this contract, liability on the part of **CEEQUAL** shall be limited to the value of the contract with the **Applicant** or the value of the loss whichever is the smaller. **CEEQUAL** accepts no liability for the consequences of its information, opinions, scores, awards and advice, whether direct or indirect.
- 9.4 Whilst **CEEQUAL** agrees to use its best endeavours to perform the contract for the **Applicant** as specified, **CEEQUAL** will not be responsible for any delays or failure to complete the contract which are beyond **CEEQUAL**'s control and which could not have been reasonably predicted.
- 9.5 Neither party shall be liable to the other for any indirect, special or consequential damages.

10 ILLEGAL ACTIVITIES

- 10.1 **CEEQUAL** will not carry out any illegal activities on behalf of the **Applicant** nor will it incite employees or subcontractors to act in breach of the law. Any requirement in this respect will nullify the **Application** and **CIRIA** will be entitled to recover in full its fee and expenses.
- 10.2 The **Applicant** agrees not to make any illegal use of any information provided by **CEEQUAL**.