

# Q-TRACK Terms of Use

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## Definitions

**“Use” or “Using”**- means your use of this site in any form including but not limited to signing up/ registering for any account with Q-TRACK, or by browsing the website [www.q-track.co.uk](http://www.q-track.co.uk).

**“Service”, “Services” or “SERVICES”** means any service (or services) which Q-TRACK provides for You.

**“Customer” or “You”** means you as the individual user of the Service, or if using on behalf of an organisation then “You” shall be taken to mean that particular organisation.

**“Your”** means belonging to or associated with You.

**“Terms” or “Terms of Use”** means these terms of use.

**“Fees for Services”** means the fees which Q-TRACK charges you for your Use of the Service. This is either expressed by a quote rendered by Q-TRACK or by you signing up to a Paid Account with Q-TRACK.

**“Q-TRACK” or “Us”** means Q-TRACK LTD (Company number 12875400)

**“Subscription Period”** means the period of subscription, beginning from the date You sign up to an account and will continue until You cancel the renewal in accordance to the conditions laid out as applicable to Your payment method.

**“Paid Account”** means an account which You pay for; this means all Q-TRACK accounts.

**“Consumer”** means an individual acting for purposes which are wholly or mainly outside that individual’s trade, business, craft or profession.

**“Intellectual Property Rights”** means trademarks, trade names, service marks, domain names, copyrights and all applications and registration of such worldwide, schematics, inventions, know-how, trade secrets, and other intangible proprietary information, whether registered or unregistered, globally.

**“Data Protection Laws”** means the Data Protection Act 1998 and all future laws and regulations in the United Kingdom that will come into effect, when they come into effect, including but not limited to the General Data Protection Regulation (REGULATION (EU) 2016/679) or its equivalent United Kingdom legislation.

**“Personal Data”** shall have the same meaning as that of the applicable Data Protection Laws.

**“Service IP Rights”** means any and all source code, object code and software provided for in the Service by Q-TRACK.

**“Confidential Information”** means any data or information that belongs to Q-TRACK and is not generally known to the public, whether in tangible or intangible form, in whatever medium provided, whether unmodified or modified by the User, whenever and however disclosed, including, but not limited to:

(i) any marketing strategies, plans, prototypes, development plans, test programmes, financial information, projections, operations, sales estimates, business plans, future business plans and performance results relating to the past, present or future business activities;

(ii) plans for products or services, customer list and supplier lists;

(iii) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method;

(iv) any concepts, reports, data (unless that data belongs to the User), know-how, works-in-progress, designs, development tools, specifications, computer software, mobile technology software, source code, object code, flow charts, databases, inventions, information and trade secrets;

(v) any document or communication which is orally said to be “confidential information” or bears a designation of the word/words “Confidential”, “Proprietary” or a similar designation which can reasonably be interpreted to communicate commercially sensitive information;

(vi) any information generated by the Receiving Party that contains, reflects, or is derived from any of the above mentioned sub clauses under the definition of “Confidential Information” ((i) – (v)).

(vii) any other information that should reasonably be recognised as confidential information by a reasonably prudent person.

**“Gross Negligence”** means failure to use even slight care or conduct that is so careless as to show complete disregard for the rights of others.

### **Acceptance of terms**

The Services that Q-TRACK may provide to you are subject to the following Terms of Use. Your Use of the Service constitutes acceptance of these Terms of Use.

### **Changes & Updates to Terms**

Q-TRACK reserves the right to update or change these Terms of Use at any time by giving you a notice by email. Q-TRACK may change or update for a variety of reasons, for example, to comply with legal changes, improve the Service, make changes to the Services or due to legal/compliance considerations and mitigating our risk.

## **Fees**

You will pay the Fees for Services of a Paid Account that you sign up to in accordance to the prices advertised on our pricing page on [www.q-track.co.uk](http://www.q-track.co.uk).

Q-TRACK reserves the right to change the Fees for Services at any time by any amount, however, such changes will not affect the Fees for Services in a Subscription Period for which you have already entered and paid for. If Q-TRACK does alter the Fees for Services, they will not affect You until you enter a new Subscription Period.

If and with our agreement, you pay by another method that is not Stripe (for example by raising a purchase order or as part of your procurement process require an invoice prior to payment), You agree that all payments made to Q-TRACK must be done in advance of the Service being provided to you.

## **Billing**

Depending on how You pay for the Fees for Services for the particular account You hold, either clause B.1 or B.2 will apply. Clause B.1 will apply to Your account if You pay the Fees for Services for that account using the Q-TRACK website (and by extension its third-party payment processor Stripe). Clause B.2 will apply to Your account if You pay for the Fees for Services by raising a purchase order and/or paying an invoice directly without using the Q-TRACK website.

B.1 This clause shall govern (to the exclusion of B.2) if You pay the Fees for Services using the Q-TRACK website (and by extension its third-party payment processor).

If You are subscribing for a Paid Account, then You must pay during the signing up to, or during the upgrading of, Your account. You will via the Q-TRACK website be able to select a monthly Subscription Period.

The Subscription Period will be on a recurring basis until cancelled by You. If You are on a monthly Subscription Period, You may cancel Your subscription for that account by using the Q-TRACK website, but must do so at least 1 day before the Subscription Period expires.

B.2 This clause shall govern (to the exclusion of B.1) if You pay for the Fees for Services by raising a purchase order and/or paying an invoice directly without using the Q-TRACK website.

If You are subscribing for an Account, then You must pay prior to the Service being provided to You. Your Subscription Period will be monthly and automatically renew after the end of each monthly Subscription Period. You may cancel the renewal of Your Subscription Period, by emailing [support@q-track.co.uk](mailto:support@q-track.co.uk) and requesting the cancellation form informing Q-TRACK of Your cancellation, at least 1 month before the end of the Subscription Period. If a cancellation is not received via the formal cancellation form, then a notice of cancellation

will not be accepted and the contract will continue unless and until proper notice is received in its correct form as identified.

## **How to Cancel Your Subscription**

To cancel Your subscription please email [support@q-track.co.uk](mailto:support@q-track.co.uk).

## **Effects of cancelling your subscription**

If Your account is cancelled you may lose data, content, features or capacity. Q-TRACK is not responsible for any data loss, content loss, feature loss or any other loss whatsoever as a result of an Account cancellation.

## **Refunds and Cancellation**

Q-TRACK do not offer refunds for an early cancellation of subscription. Please email [support@q-track.co.uk](mailto:support@q-track.co.uk) to request the Cancellation Form be sent to You by email. Once your cancellation has been actioned, Your account will be deactivated shortly after that.

We encourage You to try our free 30 day trial to get a good understanding of Q-TRACK's capabilities before committing to a subscription.

## **Conduct and Responsibilities**

We expect our Users to exercise good manners and consideration when using Q-TRACK. You are solely responsible for all content You publish in connection with the Service. Q-TRACK accepts no responsibility for any consequences incurred by the Use of the site, or for any of the content added by its Users.

Q-TRACK does not accept any responsibility for arrangements made between the Users or parties concerned Using the Service and cannot act as an intermediary. Q-TRACK does not vet or assess the integrity of its Users, if you collaborate with Users of the Service you do so solely at 100% of your own risk, as such Q-TRACK will not be liable for your collaboration with other Users or third parties in connection to the Service.

You are expressly prohibited from and agree not to:

- Use the Service in a way which competes with Q-TRACK;
- Scan or test the vulnerability of the Service or of Q-TRACK's network;
- Deny access to other Users;
- Reverse engineer any part of the Service or of Q-TRACK's Service IP Rights;
- Transmit or allow the transmission (by linking or otherwise) of any cyber security threat including but not limited to viruses, trojans, malware, worms, spyware, scareware, keylogger, backdoor, adware, wabbits, exploit software, dropper, dialer, botnet, illegitimate anti-virus, SQL injection, or any other malicious software;
- Carry out or facilitate a Distributed Denial of Service attack (DDoS);
- Commit an unlawful activity or infringe the Intellectual Property Rights of Q-TRACK or any other third party;
- Resell, distribute, act as an agent or lease the Service without the permission of Q-TRACK;

- Distribute, upload or publish anything that is considered SPAM; use your account in a manner that breaches our Anti-SPAM & Email Sending Policy (please see our Anti-SPAM & Email Sending Policy here: <https://www.Q-track.co.uk/anti-spam-policy>); distribute, upload or publish anything that is considered defamatory, libellous, pornographic, obscene or abusive, promotes hatred, violence or illegal conduct or that otherwise violates any law or the rights of another in any jurisdiction;
- Use the Service in a manner which is excessive or against the interests of other Users;
- Use the Intellectual Property Rights of any third party without the proper permission of the rights holder; or,
- Allow multiple users to use the same login details without Q-TRACK 's written agreement. Only one user is permitted for login, unless otherwise agreed in writing by Q-TRACK.
- If in the reasonable opinion of Q-TRACK, You undertake any of the prohibitions mentioned above, Q-TRACK may undertake any or all of the appropriate actions:
  - Inform the police or appropriate local authorities;
  - Delete, move, or edit content that violates;
  - Terminate your account and these Terms with you, without offering any refunds whatsoever; and/or,
  - Block your access from opening another account with Q-TRACK in the future.

### **Downtime**

Please note that Q-TRACK reserves the right to schedule downtime of the Service for maintenance, repairs and service improvements - this will be done during non-business hours and you will be provided notice of at least 7 days.

### **Location of Services as Supplied**

Q-TRACK provides you the Service from the United Kingdom (its principal place of business) - you agree to take up all requisite licences and agree to comply with any laws that apply to you regarding trading with Q-TRACK from its principal place of business.

### **Data Protection**

Q-TRACK will at all times comply with the Data Protection Laws. For more information on how we protect the User's data please see our Privacy Policy While the Privacy Policy does not form part of these Terms, they do indicate how Q-TRACK operates, we may in some circumstances impute the Privacy Policy into these Terms if You ask us to and we expressly agree to this in writing.

Q-TRACK acts as a data processor for all data the User or survey respondents store and save by Using the Service. This means that You are responsible as a data controller for ensuring that You have a legal basis for obtaining and storing the data we hold on Your behalf and fully comply with Your obligations under the Data Protection Laws.

Q-TRACK acts as data controller for any Personal Data which You store in Your account with Q-TRACK (for example your name, address and credit card information etc.) about yourself

whether You are Using the Service in a personal capacity, professional capacity or on behalf of Your organisation.

Q-TRACK will only process Your Personal Data held in Your account in order to provide You with the Service.

Q-TRACK will at all times maintain appropriate physical and organisational measures to protect Personal Data belonging to You and ensure it is secure.

Q-TRACK will at all times limit access of Your Personal Data to its employees that have signed appropriate confidentiality agreements.

Q-TRACK will give You notice without undue delay of becoming aware of a Personal Data breach (as defined by Data Protection Laws) and will cooperate with You as necessary in order for You to make the appropriate notifications. Q-TRACK will not disclose any Personal Data breach to a third party (which is not affiliated with You) without Your consent, unless it is demanded by a regulator, order of court or any other applicable legal requirements which require the disclosure of that Personal Data breach.

Q-TRACK will not use or disclose Your Personal Data unless it is required for providing the Service or if You agree with a particular use or disclosure.

In the event that Q-TRACK transfers any of Your Personal Data to a country outside the EEA, which is not recognised by the European Commission to have an adequate level of protection in accordance with Data Protection Laws, then Q-TRACK will transfer subject only to an appropriate safeguard, including where necessary entering into the Standard Contractual Clauses.

You give Q-TRACK consent to engage its subprocessors to process Your Personal Data on our behalf in order for us to provide You with the Service.

Q-TRACK will inform You before allowing another subprocessor to process Your Personal Data, You will then have 10 days to object to the subprocessor otherwise You would be deemed to accept that subprocessor. If You object to the new subprocessor, You will have the right to terminate these Terms of Use with a notice period determined by Q-TRACK without prejudice to any other rights You have under the law. When You object You will be able to terminate Your Q-TRACK account and delete all Personal Data we process on Your behalf, this will not however entitle You to a refund (or allow Your refusal to pay) for any amount of the Fees for Services.

Q-TRACK shall enter into appropriate written agreements with all of its subprocessors on terms corresponding to the data protection provisions of these Terms of Use.

Q-TRACK will remain liable to You for the non-performance of the subprocessors' obligations, subject always to the limitations of the Terms of Use.

Q-TRACK to make available to You as data controller, all information necessary to demonstrate compliance with the obligations laid down in Article 28 GDPR and allow for and contribute to audits, including inspections, conducted by Your organisation or another auditor mandated by your organisation.

The types and categories of Personal Data are Your account information which you input as part of the sign-up process, any other data You store in Your account and data which your survey respondents put into the survey responses You collect from them using the Service and any information our cookies collect as part of the Service from You or Survey Respondents.

The purpose of the processing is to enable Q-TRACK to carry out its duties under these Terms (which form the subject matter of the processing) and the duration of the processing shall be until Your account is terminated or that data is deleted from Your account.

The nature of processing involves the storage, transmission, transferring, retrieval, organisation and structuring. The nature may also be erasure where You have deleted personal data from Your account or where you ask us to do so.

Q-TRACK agrees that it will contact the account holder (or any other person designated by the account holder) to engage with You to determine whether You may make use out of additional features of the Service by means of upgrading or otherwise, or to engage with You to determine how Your use of the Service is progressing in general. Q-TRACK reserves the right not to perform this obligation if it does not wish to do so and this clause may only be exercised at Q-TRACK 's sole discretion.

### **Confidentiality**

You acknowledge that in and as a result of Using the Service, You may be making use of, acquiring Confidential Information of Q-TRACK. Any Confidential Information is agreed to be the exclusive property of Q-TRACK.

You agree not to use any Confidential Information pertaining to Q-TRACK and not to communicate any Confidential Information to any other party without the express and written permission of Q-TRACK. This clause shall survive the termination or expiration of these Terms.

You agree that, upon request of Q-TRACK or upon termination or expiration of these Terms, as the case may be, You will turn over to Q-TRACK or permanently erase all Confidential Information belonging to Q-TRACK.

### **Force Majeure**

You expressly agree that Q-TRACK shall not be liable for any consequences arising out of or in connection to any act, event, omission or accident beyond the reasonable control of Q-TRACK (including without limitation, strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, failure of any telecommunications, failure of the internet, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant machinery or equipment, fire, flood or storm, world pandemic).

### **Limitation of liability**

We are not responsible for losses associated with your use, or inability to use Q-TRACK.

## **Q-TRACK 's Negligence**

In no event will Q-TRACK be liable for any loss to You or any third party you are responsible for, arising out of or in connection to Q-TRACK's breach of these Terms, this includes but is not limited to any and all damages for Q-TRACK's (or its sub-contractors', agents' or employees') negligent acts or omissions which leads to a breach of these Terms, whether such breach was singular or in the aggregate, such damages include (but are not limited to) the following:

- Loss of anticipated savings;
- Loss of production;
- Loss of revenue;
- Business interruption;
- Increased cost of working;
- Damage to, or resulting from changes to, Your reputation;
- The costs and expenses incurred by You in finding and using replacement services to the Service;
- The costs and expenses in reconstituting lost or corrupted data;
- The costs and expenses of implementing and performing workarounds following a Service failure;
- Breach of Data Protection Laws;
- Losses incurred by You arising out of or in connection to any claim, demand, fine, penalty, investigation or proceeding from a third party (whether that third party is Your customer, a regulator, a sub-contractor, your employee, or a survey respondent) against You, caused by the act or omission of Q-TRACK (or its sub-contractors, agents or employees'); or,
- Any other indirect, injured reputation, speculative, liquidated, quantum meruit, special, disappointment, incidental, consequential, punitive or exemplary damages.

## **Q-TRACK's Gross Negligence**

If Q-TRACK is found liable to You due to Gross Negligence, then in no event will Q-TRACK be liable for any loss to You arising out of or in connection to Q-TRACK's breach of these Terms. This includes but is not limited to any and all damages for Q-TRACK's (or its sub-contractors', agents' or employees') deliberate breaches of these Terms or defective performance, whether such breach or defective performance was singular or in the aggregate, such damages include (but are not limited to) the following:

- Loss of anticipated savings;
- Loss of production;
- Loss of revenue;
- Business interruption;
- Increased cost of working;
- Damage to, or resulting from changes to, Your reputation;
- The costs and expenses incurred by You in finding and using replacement services to the Service;
- The costs and expenses in reconstituting lost or corrupted data;
- The costs and expenses of implementing and performing workarounds following a Service failure;



- Breach of Data Protection Laws;
- Losses incurred by You arising out of or in connection to any claim, demand, fine, penalty, investigation or proceeding from a third party (whether that third party is Your customer, a regulator, a sub-contractor, your employee, or a survey respondent) against You, caused by the act or omission of Q-TRACK (or its sub-contractors, agents or employees’); or,
- Any other indirect, injured reputation, speculative, liquidated, quantum meruit, special, disappointment, incidental, consequential, punitive or exemplary damages.

## **Indemnity**

- You agree to indemnify and hold harmless Q-TRACK and its subcontractors, agents and employees as a result of Your Use of the Service from and against any and all claims, costs and liabilities howsoever arising and of whatsoever nature, whether in contract or in tort, including but not limited to:
  - Infringement of any Intellectual Property Rights of a third party;
  - Claims by any third party or fines awarded by a regulator for breach of any Data Protection Laws, including (but not limited to) lack of lawful processing of Personal Data by You, Your sub-contractors or employees;
  - Your breach of any law whether in the United Kingdom, where You are based and/or where it applies to You;
  - Any acts of bribery committed by You, Your employees, agents or sub-contractors;
  - Injury to or death of any person;
  - Loss of or damage to any property;
  - Court and reasonable attorney expenses and fees in connection with or resulting from Q-TRACK enforcing this Indemnity clause; and,
  - Your failure to obtain a licence or permission as described in clause 14 of these Terms of Use (“(14) Location of Services as Supplied”).
  - This clause (“Indemnity”) will not apply if any of the circumstances described were due to Q-TRACK’s (or any of its employees’, agents’ or subcontractors’) negligence or Gross Negligence.

## **Modern Slavery Act 2015**

Q-TRACK is fully aware of its obligations under the Modern Slavery Act 2015 (and The Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015, SI 2015/1833) and undertakes to be and remain fully in compliance of the legislation.

## **Assignments & Delegations**

You are prohibited from assigning Your rights and/or delegating Your obligations under these Terms to any other person or organisation. Should You want to assign a right or obligation, You can contact Q-TRACK, Q-TRACK will then render a decision based on its sole discretion as to whether You are granted consent or not for any assignments.

Q-TRACK has the right to assign or sub-contract any of its rights or obligations without requiring to notify You or obtain Your consent, unless as provided for by (“ Data Protection”) of the Terms of Use.

## **Your Compliance with laws**

By Using the Service, You agree that it is Your responsibility to be in compliance of the laws that apply to You, wherever You are located.

## **Law & Jurisdiction**

You and Q-TRACK hereby irrevocably agree that any dispute arising out of or in connection to these Terms shall be governed solely and exclusively by the laws of England & Wales.

You and Q-TRACK hereby irrevocably agree that the courts of England & Wales shall have the sole and exclusive jurisdiction to hear any dispute arising out of or in connection to these Terms.

## **Alternative Dispute Resolution for Consumer Disputes**

If you are a Consumer based in the EU, you may use the European Online Dispute Resolution platform to resolve disputes with us. The web address for this is: <https://ec.europa.eu/consumers/odr>

For the purposes of this clause, our email address is [support@q-track.co.uk](mailto:support@q-track.co.uk)

## **Order of Precedence**

These terms (along with any quote sent to You) contain the entire agreement between You and Q-TRACK. Unless otherwise agreed in writing by Q-TRACK, these Terms prevail over any other terms of business or purchase conditions put forward by You.

## **Headings**

The sections and headings in these Terms are for reference purposes only and shall not affect the meaning or interpretation of these Terms or individual clauses within these Terms.

## **Severability**

If any clause, sub-clause or any part thereof of these Terms is determined to be unenforceable by a competent court holding the proper jurisdiction, that clause, sub-clause or any part thereof will be severed and shall not affect the remainder of the agreement, including any other clauses, sub-clauses, or part(s) thereof.

## **Publication**

By Using the Service You agree for Q-TRACK to have the right (but not the obligation to) publicise your name, trading name and/or trade mark on Q-TRACK's website and/or marketing material as a customer of Q-TRACK.

## **Intellectual Property Rights**

You grant Q-TRACK the non-exclusive licence and right to use any Intellectual Property Rights you own as may be reasonably necessary to provide you the Service that you have requested.

By Using the Service, Q-TRACK is granting you the non-exclusive and temporary licence to use the Service IP Rights. This licence shall terminate when your account is either closed or deleted by any means through these Terms. You expressly prohibited from modifying any of the Service IP Rights without the express and written consent of Q-TRACK.

(Intellectual Property Claims

If you believe that a customer of Q-TRACK has used any part of the Service to infringe your Intellectual Property Rights, then please report it to [support@q-track.co.uk](mailto:support@q-track.co.uk) with the following details:

Your name/organisation name:

Email address:

A description of the alleged infringement (please be as detailed as possible):

Shortly thereafter, Q-TRACK will look into the situation as quickly as possible and notify you of any decisions taken.

## **User Content**

You are responsible for all content you use, communicate or publish during Your Use of the Service. As such You must ensure that you have all the consents, licences, permissions and that You are authorised by law to display the content that you are using in relation to the Service.

## **No waiver**

No delay, neglect or forbearance on the part of either party to these Terms in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement.

No right, power or remedy in this Terms conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

## **Third Party Rights**

The Contracts (Rights of Third Parties) Act 1999 does not apply to this Agreement and no third party will have any right to enforce or rely on any provision of this Agreement.

## Report Survey Abuse

If you believe that a User of Q-TRACK's Services has used our Services inappropriately or in breach of these Terms (in particular "Conduct and Responsibilities"), then please contact [support@q-track.co.uk](mailto:support@q-track.co.uk) with the following details:

Your name/organisation name:

Email address:

A description of the alleged Service abuse whether it is phishing, spam, unlawful, inappropriate, contains harmful software, or for any other reason (please be as detailed as possible):

Shortly thereafter, Q-TRACK will look into the situation as quickly as possible and notify you of any decisions taken.

### Liability Provision

Nothing in this Agreement shall limit or exclude the liability of either party for:

- death or personal injury caused by negligence;
- any fraud or fraudulent misrepresentations; or,
- any liability that may not lawfully be limited or excluded.