

Terms & Conditions

Definitions

“Risq” means Risq Ventures Ltd of 5 Chancery Lane, London WC2A 1LG (registered in England under number 9417760);

“Accounts” means the account types defined in the Report, against which Risq will make appropriate enquiries of the Person’s financial position;

“Authorised User” means the Customer, or employee of a Customer, either
a) holding a valid certificate or accreditation to practice probate or estate administration; or
b) acting in a professional capacity as either an attorney or as a deputy, authorised by the Court of Protection and regulated by the Office of the Public Guardian;
and being either an active member of The Society of Trust and Estate Practitioners, The Law Society of England and Wales, The Scottish Law Society, Chartered Institute of Legal Executives, Chartered Institute of Accountants of England & Wales, Council of Licensed Conveyancers, or another recognised professional body accepted by Risq in writing;

“Client” means the appointed representatives of the Person, for whom the Customer is acting as agent in the procurement of the Services;

“Conditions” means these terms & conditions together with the Search Request Form, as amended by Risq from time to time;

“Customer” means the company which has entered into the Conditions with Risq, to act as agent of the Client in the procurement of the Services;

“Delegated Authorised User” means an employee of the Customer where the Authorised User has granted authority for the Delegated Authorised User to perform any function within the Service on the Customer’s behalf;

“Fees” mean any and all sums due under the Conditions from the Customer to Risq for provision of Reports via the Service, as specified when placing an Instruction;

“Instruction” means the order for the Service by completion of the Search Request Form;

“Intellectual Property Rights” means copyright (and related rights), designs, patents, trademarks, and all other intellectual property rights that may exist in anything that Risq may create or produce as part of the Reports or Service. This includes all such rights, whether they are registered or unregistered, and the rights to apply for renewals or extensions of those rights (where relevant);

“Match” means an apparent similarity between the details provided in the Search Request Form and the Person’s details provided in the Report;

“Non-consented Account” means an Account where the Person may have not consented for their information to be shared with a third party;

“Notifier” means the Authorised User acting on behalf of the Person with a legal obligation and a legitimate interest to manage the Person’s financial affairs;

“Person” means either a deceased individual or a living individual lacking mental capacity for whose estate the Client is acting and for whom the Customer has procured the Service;

“Report” means a Report or Refresh Report, in any media or in a data format prepared by Risq, excluding Supplier Reports;

“Refresh Report” means a subsequent Report prepared for the same Person, incorporating updated third party data;

“Search Request Form” means the form completed by the Customer, providing details of the Person, together with any additional information required by Risq to fulfil the Instruction;

“Service” means the delivery of a Report or Supplier Report purchased through the Estatesearch.co.uk website or other means for the placing of an Instruction;

“Supplier” means any third party supplier providing a Supplier Report as part of the Services;

“Supplier Report” means any report, document or other product, including insurance or indemnity policies, that Risq have procured from a Supplier on behalf of the Customer in accordance with the Supplier Terms;

“Supplier Terms” means the terms and conditions of Suppliers in respect of Supplier Reports incorporated by reference to these Conditions and available at <https://www.estatesearch.co.uk/third-party-terms>.

1. Conditions

1.1 The Authorised User or Delegated Authorised User is acting for the Customer on behalf of the Client.

1.2 The Customer agrees that, by placing an Instruction, it accepts the Conditions and Supplier Terms and agrees to pay the Risq Fees.

1.3 Following review and acceptance of the Instruction, Risq agrees to supply the Service to the Customer.

1.4 Risq reserves the right to reject a Search Request Form. In such event, Risq will refund the Risq Fee.

2. Customer Obligations

2.1 By agreeing to these Conditions and the Supplier Terms, the Customer is appointing Risq to be its agent for the purposes of seeking information from third parties on behalf of the Client, and Risq may represent itself as such but only for that purpose. The Customer authorises Risq to supply confidential information and personal data of the Person and Notifier to third parties or Suppliers as required, but only for the purposes of the provision of the Service and for no other purpose.

2.2 The Customer authorises Risq to hold any data that it supplies to Risq as anonymised and/or aggregated data for statistical & marketing purposes and insight for further product development. Risq may retain data and information that the Customer has provided in respect of the Person and the content of the Report for a period of up to twelve years after the Instruction date.

2.3 The Customer:

2.3.1 is not contracting as a consumer, as defined under the Unfair Contract Terms in Consumer Contracts Regulations 1999;

2.3.2 accepts responsibility for the ongoing management of access by suitably qualified Authorised Users or Delegated Authorised Users and for the legitimate, fair and accurate usage of the Service and for the placement of Instructions by its Authorised Users or Delegated Authorised Users;

2.3.3 is in receipt of necessary or appropriate documentation relating to the Instruction as required by Risq from time to time; and will provide copies of the same to Risq with the Search Request Form;

2.3.4 has been properly appointed to act on behalf of the Person or their estate to obtain, use and disclose the information provided in the Report or Supplier Report in accordance with all applicable laws;

2.3.5 shall otherwise comply with the provisions of all applicable laws and European Union regulation including, without limitation, in relation to the disclosure or processing of any information obtained through Risq, and the Money Laundering Regulations 2007, Data Protection Act 2018, and Companies Act 2006;

2.3.6 shall, in the case of intestacy, act on behalf of the next of kin in accordance with the rules of intestacy set out in the Administration of Estates Act 1925 and associated legislation;

2.3.7 shall take all reasonable precautions to keep safe all log-in details and prevent fraudulent use of the Service;

2.3.8 shall take all reasonable precautions such that if an Authorised User leaves, the Customer must ensure that there is at least one Authorised User registered with the Service and, if an Authorised User or Delegated Authorised User leaves, the Customer must do everything they can to make sure such user can no longer access the Service, including notification to Risq for suspension from the Service.

3. Reports and Supplier Reports

3.1 The Customer shall rely on its own skill and judgement in determining the suitability of the Report or Supplier Report for its own purpose and use.

3.2 Risq acknowledges that in providing the Report or Supplier Report it owes a duty of care to the Customer.

3.3 The Customer acknowledges and agrees that the Report or Supplier Report is provided on the following basis:

3.3.1 Risq does not give an assurance that a search of third party data sources will give rise to a Match. If no Match is made, the Instruction will not be fulfilled;

3.3.2 Risq does not warrant the accuracy or completeness of information and data supplied in the Report, Supplier Report or Instruction process, as they are derived from third party sources, are based upon the information provided in the Search Request Form, and may also be updated in any Refresh Report;

3.3.3 Risq does not claim that the Accounts represent an exhaustive list of all sources that might be consulted;

3.3.4 Risq does not claim that the Accounts include Non-consented Accounts;

3.3.5 The Report or Supplier Report is only intended for business purposes and for use or interpretation by the Customer, as part of their reasonable due diligence in probate matters or estate administration when compiling estates of a deceased Person, or when managing property and financial affairs in respect of a living Person;

3.4 The Customer shall on receipt of the Report carry out a reasonable inspection to satisfy itself that there are no apparent defects or failures or inaccurate Matches and shall promptly inform Risq if they are or should reasonably be aware of any such defect or failure.

4. Liability

4.1 Subject to Clauses 4.7, Risq shall not be liable in any other circumstances, including, without limitation:

4.1.1 for any error in the Report resulting from inaccuracy, corruption or omission of information and data provided by a third party or the Customer, or from computer malfunction or corruption of data whilst in the course of processing, except to the extent that Risq should reasonably have been alerted to such error;

4.1.2 for any change in information and data between the initial Report and any Refresh Report;

4.1.3 for loss of profits, loss of contracts or other indirect or consequential loss or damage resulting from any error or omission by Risq in the provision of the Report;

4.1.4 for any third party service obtained or purchased by the Customer in connection with the Report.

4.1.5 for any loss or consequence of the act or omission of a Supplier except that Risq shall, at the Customer's request and expense, provide reasonable assistance in any claim brought by the Customer or their Client against a Supplier. Supplier Terms will apply to all Supplier Reports to

the exclusion of any other terms and conditions. Any claim relating to a Supplier Report must be made against the Supplier and in accordance with the Supplier Terms. Subject to the maximum extent permitted by law, Risq makes no representations, warranties or conditions of any kind, either express or implied, with respect to Supplier Reports and Risq shall not be liable in contract, tort, negligence, statutory duty or otherwise for any loss or damage whatsoever or howsoever caused by a Supplier Report.

4.2 Any party, other than the Customer or the Client, who relies on the Report does so entirely at its own risk, including, without limitation, any insurers. Risq accepts no responsibility and shall not be liable for any loss caused as a result of reliance upon the Report by a third party or as a result of its disclosure to a third party.

4.3 Time shall not be of the essence in respect of the provision of the Service.

4.4 Risq shall not be liable for any delay, interruption or failure in performance of its obligations arising from circumstances outside its control, including, without limitation: war, flood, riot, Act of God, strike or other labour dispute, suspension or delay of service at public registries, lack of power, telecommunications failure or overload or computer malfunction, non-performance or delay by suppliers or sub-contractors.

4.5 Subject to Clauses 4.1 and 4.7, Risq's total liability arising out of the provision of the Service (including any Refresh Reports or subsequent Instructions for the same Person) in contract, negligence or otherwise, for damages or loss sustained or incurred by the Customer or Client shall be limited (subject to Clause 4.7, except in relation to fraud, death or personal injury) to £2 million.

4.6 Risq's liability under the Conditions for the Report shall cease upon the expiry of six years from the Instruction date.

4.7 Nothing in these Conditions shall exclude Risq's liability for fraud or fraudulent misrepresentation or for death or personal injury caused by Risq's negligence or breach of its statutory duty.

4.8 These Conditions and Supplier Terms may be varied from time to time. The Conditions in force at the date of the Contract, in conjunction with the relevant Supplier Terms shall govern the Contract to the exclusion of all other terms and conditions.

5. Intellectual Property Rights

5.1 The Customer acknowledges that all Intellectual Property Rights in respect of the data and information contained in the Report, including copyright and design rights, but other than information provided by the Customer, are and shall remain the property of Risq or any party that has supplied information or data used to create the Report, as appropriate, and these Conditions do not grant or purport to grant, assign, or transfer any such rights.

5.2 The Customer is hereby granted an exclusive licence to use the Report in order for the Client to make use of the Service and is entitled to make printed copies of the Report, as reasonably required. Assignment of these rights or further copies of the Report may not be made in whole or in part without the written permission of Risq.

5.3 The Customer shall:

5.3.1 not remove, suppress or modify any trademark, copyright or other proprietary marking belonging to Risq or any third party from the Report;

5.3.2 not create any product which is derived directly or indirectly from the information and data contained in the Report or combine the Report with or incorporate it into any other information, data or service;

5.3.3 not re-format, adapt, alter, modify, reverse engineer, de-compile, add to or otherwise change any data or material contained in the Report; and

5.3.4 not use the Report in any way which would facilitate its use in providing such information as contained in the Report in relation to a different Client.

5.4 Clauses 5.3.2 and 5.3.3 shall not prevent the Customer from providing written advice based upon the Report.

5.5 The Customer shall notify Risq of any requirement to disclose, publish or disseminate any information contained in the Report pursuant to a court order or as otherwise required by law other than in accordance with normal estate administration duties, but to limit disclosure to the minimum necessary to comply with the requirement.

6. Confidentiality and Reliance

6.1 The Report is to be used solely for the benefit of the Customer and the Client.

6.2 The Report and any information provided by the Customer to Risq in contemplation of the preparation of the Report shall be treated as confidential information. Risq will take all reasonable information security measures to ensure such confidential information is kept secure and will at all times comply with the provisions of the Data Protection Act 2018, as amended from time to time.

6.3 Risq agrees not to disclose or publish any statement relating to such confidential information to any third party without the prior written consent of the Customer, unless required to do so by law.

7. Risq's Fees

7.1 The Customer shall pay Risq's Fees for the Services in accordance with the terms agreed between the Parties, including any taxes which may be payable.

7.2 The Customer shall pay Risq's Fees without any set off, deduction or counterclaim.

7.3 If the Customer fails to make any payment on the due date, Risq shall be

entitled to charge interest on overdue amounts at 2% per annum above the Lloyds Bank plc base rate (as varied from time to time) from the due date until payment in full is made (whether before or after judgement).

8. General

8.1 These Conditions constitute the entire agreement between the parties and no statement given orally or in writing shall be deemed incorporated unless executed in writing by a Director of Risq and countersigned by the Customer.

8.2 Each of the Conditions and sub-conditions of these Conditions is distinct and severable. If any of them shall be determined to be invalid, illegal or unenforceable, the remainder of these Conditions shall continue to be enforceable.

8.3 Any time or indulgence granted by Risq or the Customer or delay in exercising any of its rights under these Conditions shall not prejudice or affect Risq's or the Customer's rights or operate as a waiver of them.

8.4 These Conditions shall at all times be governed by and construed in accordance with English & Welsh Law and the parties submit to the exclusive jurisdiction of the English & Welsh courts.

8.5 Except as otherwise provided in these Conditions, a person who is not a party to any contract to which these Conditions apply shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of such contract.

Version: T&C v3.1

Date: 17th February 2020